BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2015010202
v.	ORDER FOLLOWING PREHEARING CONFERENCE
TAMALPAIS UNION HIGH SCHOOL DISTRICT.	

On May 4, 2015, a telephonic prehearing conference (PHC) was held before Administrative Law Judge B. Andrea Miles, Office of Administrative Hearings. Attorney Peter Sturges appeared on behalf of Student. Student's father observed the hearing. Attorney Jan Tomsky appeared on behalf of Tamalpais Union High School District. The PHC was recorded.

Based on discussion of the parties, the ALJ issues the following order:

1. Pending Motions: On April 29, 2015, Student submitted a motion to compel Tamalpais to respond to the due process complaint. As of the date of the hearing, Tamalpais had until the close of business on May 4, 2015 to submit a written response to Student's motion. At the hearing, Tamalpais's counsel indicted that she would prefer to submit a written response instead of addressing Student's motion during the hearing. A separate written order will be issued after consideration of the motion and any timely filed response.

2. Hearing Dates, Times, and Location: The hearing shall take place May 12 - 14, 2015, and continuing day to day, Monday through Thursday at the discretion of the ALJ. The hearing shall be held at Tamalpais's District Office, which is located at 395 Doherty Drive, Larkspur, California 94941. The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 a.m. all other days unless otherwise ordered.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

3. Issues and Proposed Resolutions: The issues at the due process hearing were discussed and clarified during the PHC.[1]

Issue I: Did Tamalpais deny Student a free appropriate education during the 2012-2013 school year, beginning December 16, 2012, by:

a. Failing to offer Student an Individual Transition Plan (ITP) until 3/25/13;

b. Failing to provide Student with an appropriate ITP;

c. Failing to report Student's progress on ITP goals throughout the year;

d. Failing to offer Student appropriate academic goals;

e. Failing to provide Student with an assessment plan until January 2014, after Parent requested said plan in April 2013;

f. Failing to administer the math and social studies portion of the Spring 2013 STAR test to Student; and

g. Failing to offer Student an alternative standardized assessment to the Star test in Spring 2013?

Issue II: Did Tamalpais deny Student a FAPE during the 2013-2014 school year by:

a. Failing to include all required team members for the February 28, 2014 IEP team meeting so Parents' request for continued social skills training could be addressed;

b. Predetermining Student's placement and services at the February 28, 2014 IEP team meeting;

c. Failing to provide Student with an assessment plan until January 2014, after Parent requested said plan in April 2013;

d. Failing to provide Student with sufficient social skills training;

e. Failing to follow the recommendations of the December 2013 neuropsychological report at the February 28, 2014 IEP team meeting;

f. Failing to offer Student appropriate goals in the areas of transition, academics, and social emotional needs;

[1] The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

g. Failing to offer Student an appropriate ITP;

h. Failing to offer Student placement in the least restrictive environment for social studies, world history, and economics classes[2];

i. Failing to offer Student appropriate services including tutoring and social coaching;

j. Failing to provide Student appropriate supports and services to transition from a residential, therapeutic placement to a comprehensive high school; and

k. Failing to provide Student's progress on annual goals and transition goals at the final IEP team meeting held before Student graduated?

Proposed Resolution I: Student seeks an order finding that Student was the prevailing party to all of the issues.

Proposed Resolution II: Student seeks to have Tamalpais provide and fund a comprehensive ITP program assessment from an independent assessor to be selected by Parents for the purpose of identifying Student's transition needs and assessments in all areas, including but not limited to academic, career, vocational, social skills, self-help, and independent living.

Proposed Resolution III: Student seeks to have Tamalpais provide Student with a comprehensive ITP pursuant to the recommendations of the IPT assessment including, but not limited to:

a. Specific and measurable goals in all areas as needed, including academic, career, vocational, employment, social skills, self-help, and independent living;

b. 40 hours of individualized career counseling supports;

c. 40 hours of job coaching supports;

d. 100 hours of academic tutoring;

e. 100 hours of independent living skills and self-help counseling, training, and supports; and

[2] Tamalpais moved to strike this issue on the grounds that it fell outside the jurisdiction of OAH because Tamalpais believed it involved a general education placement. Tamalpais's motion to strike is denied without prejudice. The complaint appears to support that Student was placed in a special education setting for world history, social studies, and economics. The ALJ based her ruling on the information contained in the reports and the information provided by the parties at the PHC.

f. 100 hours of social skills counseling, training, and supports.

Proposed Resolution IV: Student seeks to have Tamalpais provide a fund in the amount of $15,000 to pay for educationally necessary curriculum including, but not limited to, tuition costs, technology devices, supplies, admission costs for community activities, and bus/public transportation costs.

Proposed Resolution V: Student seeks to have Tamalpais fund 80 sessions of educationally-related therapeutic services.

Proposed Resolution VI: Student seeks and order finding that all records concerning the alleged disciplinary/behavioral events concerning Student in Spring 2014 be expunged from his educational and special education files.

Proposed Resolution VII: Student seeks that Tamalpais pay for attorney's fees and court costs that were within OAH's jurisdiction to award.

Proposed Resolution VIII: Student seeks all other and such relief as OAH may order at the time of the hearing.

4. Exhibits: Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall use numbers to identify exhibits, but shall place the letter "S" or "D" in front of the exhibit to designate if it is a Student or District exhibit (for example, "S-5, S-6, or D-1, D-2"). Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be Bates-stamped. The parties shall include only one document per each exhibit tab. Each exhibit binder shall contain a detailed table of contents. The parties shall serve their evidence binders on each other in compliance with Education Code section 56505, subdivision (e)(7), at least five business days prior to hearing.[3] At the hearing, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and a second exhibit binder for use by witnesses. The parties may not serve exhibits on OAH prior to the hearing. In the event of duplicate exhibits, the most legible version will be used.

5. Witnesses: Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses out of order. Neither party shall be permitted to call any witnesses not timely disclosed except for good cause shown or in rebuttal, and at the discretion of the ALJ.

[3] Student's request to serve his proposed exhibits on Tamalpais by electronic means was denied. Tamalpais did not agree to Student's request to stipulate to a one day delay in the exchange of evidence.

The parties are encouraged to review and shorten their witness lists prior to the hearing, bearing in mind that evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear.

The parties shall meet and confer as to the schedule of witnesses and projected length of direct and cross-examination. At the start of the hearing, the parties shall present a final schedule of witnesses with time estimates.

6. Order of Presentation of Evidence and Scope of Witness Examination: Student bears the burden of proof and shall present its evidence first, followed by Tamalpais. Where Student and Tamalpais intend to call the same person to testify, each party will examine the witness immediately after the other party, so the witness will only need to be called to the witness stand once. After the first direct and cross-examinations, each party shall be limited in examining the witness to only those matters raised in the immediately preceding examination.

7. Telephonic Testimony: Whether a witness may appear by telephone is a matter within the discretion of the ALJ. Cal. Code Regs., tit. 5, § 3082, subd. (g). Any party seeking to present a witness by telephone shall move in advance for leave to do so, unless the opposing party has stipulated that the witness may appear by telephone. The proponent of the witness shall provide the proposed witness with a complete set of exhibit binders from all parties, containing all of each party's exhibits, prior to the hearing; and shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness, and the witness to hear objections and rulings.

Student's motion to allow Stuart Gustafson, MFT, to testify telephonically is granted. Student shall provide Mr. Gustafson with a complete exhibit binder from each party, containing all of each party's exhibits, prior to the hearing.

8. Electronic Recording of Hearing: At present, Student intends to make an audio recording of the hearing. The following conditions apply to any recording: 1) that OAH's recording is the only official recording; 2) that the recorder will be turned on and off at the same time as the ALJ's recording, to avoid recording conversations while off the record; and 3) the operation of the party's recording mechanism will not be allowed to delay the hearing. Failure to comply with these conditions may result in a revocation of this order which grants the parties permission to make an audio recording of the hearing.

9. Motions: Student indicted that he may file a motion to amend the complaint. In the event that Student elects to file that motion, he must comply with the relevant statutory timelines. All other pretrial motions must be filed by the close of business on May 5, 2015. Any other motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not made prior to or during the prehearing conference.

10. Stipulations: Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

11. Conduct of Counsel and Hearing Room Decorum: Counsel, all parties, and all witnesses shall conduct themselves in a professional and courteous manner at all times. Cellular phones and other noisemaking electronic devices shall be shut off or set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ.

12. Special Needs and Accommodations: A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk at (916) 263-0880, or the OAH ADA Coordinator at OAHADA@dgs.ca.gov or 916-263-0880, as soon as the need is made known. Additional information concerning a request for reasonable accommodation is available on OAH's website at http://www.dgs.ca.gov/oah/Home/Accommodations.aspx.

At present neither party anticipates the need for special accommodation for any witness or party, or for interpreter services.

13. Hearing Closed To the Public: At the request of Student, the hearing will be closed to the public.

14. Settlement: The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 P.M. THE DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035. THE PARTIES SHOULD ALSO LEAVE CONTACT INFORMATION SUCH AS CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. THE PARTIES SHOULD SIMULTANEOUSLY FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT THE FAXINATION LINE at 916-376-6319.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

15. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: May 5, 2015

/s/

B. ANDREA MILES
Administrative Law Judge
Office of Administrative Hearings