BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2013051152
SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH CASE NO. 2013040629 ORDER FOLLOWING PREHEARING CONFERENCE

On September 23, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Robert Helfand, Office of Administrative Hearings (OAH). N. Jane DuBovy and Mandy S.L. Favaloro, Attorneys at Law, appeared on behalf of Parents on behalf of Student (Student). Geneva L. Englebrecht, Attorney at Law, appeared on behalf of the Santa-Monica Unified School District (District). The PHC was not recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on September 30, 2013; October 1 through 3, 2013; and October 7 through 10, 2013 at the Facility Improvement Project Office located at 2828 Fourth Street, Santa Monica, CA 90405. The hearing shall begin at 1:30 p.m. the first day of the hearing and at 9:30 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.

2. Issues and Proposed Resolutions. The issues at the due process hearing are listed below.

Issues

District Issue:

(A) Whether the January 2012 psychoeducational and academic assessments were appropriately conducted such that Student is not entitled to an Independent Education Evaluation (IEE) at public expense?

Student Issues:

(B) Whether the District committed procedural violations of the IDEA which resulted in a denial to Student of a free appropriate public education (FAPE) by impeding Student's parents (Parents) to meaningfully participate in the Individualized Education Program (IEP) process resulting in a loss of education benefit by Student:

(1) Failure of the District to implement consented to portions of the January 2011 IEP;

(2) Failure of the District to implement consented to portions of the January 2012 IEP;

(3) Failure of the District to convene an IEP meeting from May 2011 through January 2012 because of Student's lack of progress on the January 2011 IEP goals;

(4) Failure of the District at the January 2012 IEP meeting to take into consideration (a) Student's strengths, academic, developmental, and functional needs, and (b) parental concerns;

(5) Failure of the District at the June 2012 IEP meeting to take into consideration (a) Student's strengths, academic, developmental, and functional needs, and (b) parental concerns;

(6) Failure of the District at the January 2013 IEP meeting to take into consideration (a) Student's strengths, academic, developmental, and functional needs, and (b) parental concerns;

(7) Failure of the District to timely provide all of Student's education records pursuant to Parents' request of July 12, 2012;

(8) Failure of the District to timely hold an IEP meeting of 60 days after Parents signing the Assessment Plan on June 28, 2013;

(9) Failure of the District to file, without unnecessary delay, for Due Process to assert that its January 2012 assessments were appropriate or to ensure that an IEE was provided at no expense to Parents when Parents disagreed with the District assessments on February 8, 2013;

(10) Failure of the District to consider the results of an assessment by Dr. Davies at the May 2013 IEP meeting; and

(11) Failure of the District to have a special education teacher in attendance at the May 2013 IEP meeting?

(C) Did the District deprive Student of a FAPE by its failure to find Student eligible for special education and related services under the category of Specific Learning Disorder (SLD) at the January 2013 and May 2013 IEP meetings?

(D) Were the District's January 2013 academic and psychoeducational assessments appropriate and sufficient to identify all of Student's unique needs?

(E) Whether the District has denied Student a FAPE since May 2011 by:

(1) Failing to offer an appropriate program and related services, including specialized academic instruction in an appropriate setting, in the January 2011 IEP that would permit Student to make progress toward a general education curriculum;

(2) Failing to offer goals in the January 2011 that would address Student's needs;

(3) Failing to offer an appropriate program and related services, including specialized academic instruction in an appropriate setting, in the January 2012 IEP that would permit Student to make progress toward a general education curriculum;

(4) Failing to offer goals in the January 2012 that would address Student's needs;

(5) Failing to offer an appropriate program and related services, including specialized academic instruction in an appropriate setting, in the June 2012 IEP that would permit Student to make progress toward a general education curriculum;

(6) Failing in June 2012 IEP to make any changes, including new goals, to Student's IEP despite Student's lack of progress on her IEP goals and low grades;

(7) Failing to provide accommodations in the January 2011 IEP through June 2012 IEP;

(8) Failing to offer an appropriate program and related services in the January 2013 IEP that would permit Student to make progress toward a general education curriculum;

(9) Failing to write any academic goals in the January 2013 IEP because Student was not found eligible under the category of SLD;

(10) Failing to offer an appropriate program and related services, in the May 2013 IEP that would permit Student to make progress toward a general education curriculum; and

(11) Failing to write goals in all areas of unique needs in the May 2013 IEP despite the recommendation of Dr. Davies that Student required goals in the areas of reading and writing fluency?

Proposed Resolutions

The District's proposed resolution is for an order determining that the District's January 2012 assessment was appropriately conducted such that the Student is not entitled to an IEE conducted at District expense.

The Student's proposed resolutions are that the OAH order the District to reimburse Student's parents for (1) the cost of attending the Summit View nonpublic school, (2) tutoring services, and (3) the Independent Education Evaluation conducted by Dr. Davies.

3. 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. Each exhibit binder shall contain a detailed table of contents. The parties represent that they have served their evidence binders on each other in compliance with Education Code section 56505, subdivision (e)(7). 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. *The parties are encouraged to meet and confer so that each side's exhibit books do not contain duplicate exhibits.*

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not included in the exhibit lists and not previously exchanged shall not be admitted into evidence at the hearing unless it is supported by written declaration under penalty of perjury, and the ALJ rules that it is admissible.

4. 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 disclosed in the party's prehearing conference statement except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

The parties are ordered to meet and confer by September 26, 2013, as to the schedule of witnesses for the first day. The parties have agreed to coordinate the availability and order of testimony of witnesses to ensure that there is a witness available to testify at all times during the hearing, and to ensure that the hearing is completed as scheduled.

The following witnesses may be called to testify by the District: Student; Student's parents; Dr. Kris Vegas; Anne McGreevy Ernst; Maureen Rosen; Michelle Hajeb; Jennifer Morgan; Juliette Boewe; Didier Beauvoir; Katy Lapajne; and Dr. Sara Woolverton.

The following witnesses may be called to testify by Student: Student; Student's parents' Dr. Mari Davies; Carla Rowland; Mr. Leggs, Ms. Gauthier; Ms. Briones; Ms. Suarvez; Heidi Kleis; Wendy Wax Gellis; Maureen Rosen; Sara Woolverton; Nancy Rosenfelt; Ms' Francis; Ms. Bryant; Juliette Boewe; Mary Yarber; Dr. Kris Vegas; and Elisabeth Flohr. The Student has designated Dr. Mari Davies as an expert witness.

The witness schedule will be finalized at the commencement of the due process hearing. Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

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.

5. Scope of Witness Examination. 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.

6. 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. No witness will be heard by telephone unless all these requirements have been fulfilled.

7. Order of Presentation of Evidence. This matter is consolidated. The order of presentation of evidence shall be as follows: the Student shall proceed with her case first. The District will then proceed to present its case.

8. Motions. On September 19, 2013, the District filed a motion to change the location of the hearing because there were no suitable rooms available at the District offices. No opposition was received. The District's motion is granted. The District shall designate parking spaces for the ALJ, counsel, parties, and witnesses.

At present no other prehearing motions are pending or contemplated. Any prehearing motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not made prior to or during the prehearing conference.

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

10. 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, pagers, recorders, 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.

11. Compensatory Education/Reimbursement. Any party seeking reimbursement of expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of expenditures, as part of its case in chief. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

12. Special Needs and Accommodations. Student has requested to record the hearing for purposes of assisting in note keeping. Counsel shall renew the request to the hearing ALJ on the first day of hearing.

13. Hearing 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.

Dated: September 20, 2013

/s/
ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings