BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2013031004
WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH CASE NO. 2013040364
In the Matter of: WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH CASE NO. 2013060755 ORDER FOLLOWING PREHEARING CONFERENCE

On September 23, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Adeniyi A. Ayoade, Office of Administrative Hearings (OAH). Frances S. Kaminer, Attorney at Law, appeared on behalf of Parents on behalf of Student. (Student) Shawn Olson Brown, Attorney at Law, appeared on behalf of the West Contra Costa Unified School District (District). The PHC was recorded.

Based on discussion with the parties, the ALJ issues the following Order:

1. Hearing Dates, Times, and Location. The hearing shall take place at **2465 DOLAN WAY, SAN PABLO, CA 94806,** on **September 30, 2013, October 1-3, 2013, October 7-10, 2013, and October 14-15, 2013,** and continuing day to day thereafter, Monday through Thursday, as needed, at the discretion of the ALJ. Unless otherwise

ordered, the hearing shall begin at 1:30 p.m. on September 30, October 7, and October 14, and at 9:30 a.m. on all other days.

The District shall ensure that there is an appropriate room available for the due process hearing. The room shall meet OAH specifications, and at a minimum, the room shall have separate tables capable of being moved into a courtroom configuration, as follows: (1) one table for Student's representatives; (2) one table for District's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table. A room with one large conference table is not suitable. If a suitable room is not available for any of the hearing days, the District shall immediately notify OAH and the parties, and propose a different location. Fresh water and tissue shall be available in the hearing room at all times. In addition, **District has agreed to provide a DVD player and a projector for use by Student in the presentation of his case during the hearing**.

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 has not been properly notified of the hearing date or properly subpoenaed, as applicable.

2. Issues and Proposed Resolutions. The issues in these consolidated matters are as alleged in each party's respective due process complaint(s), as clarified in the parties' PHC statements, and discussed with the ALJ at the PHC. The issues are as follows:[1]

a) **STUDENT'S ISSUES**

1) Did District deny Student a free appropriate public education (FAPE) by:

a. failing to complete the assessments it offered to Student in the settlement agreement signed by the parties in May 2010;

b. failing to write measurable present levels of performance in the areas of socialization, speech and language (SL) and reading in Student's triennial individualized education program (IEP) dated April 24, 2013 and May 21, 2013; and

[1] The issues at the due process hearing are those alleged in the parties' due process requests (complaints) as clarified at the PHC. As necessary, the issues have been clarified and reframed for clarity, as set forth herein below. Any issue(s) that is not listed and/or permitted by this order shall be included only with an amendment to a Due Process Complaint. The amendment shall comply with California Education Code section 56502, subdivision (e). The filing of an amended complaint will restart the applicable timelines for a due process hearing. (20 U.S.C. § 1415(c)(2)(E)(ii).)

c. failing to develop appropriate goals in all areas of need[2] in Student's triennial IEP dated April 24, 2013 and May 21, 2013?

2) Did District deny Student a FAPE in the LRE because District predetermined Student's placement and failed to consider the recommendations of Student's IEP team members who had knowledge of Student at the April 24, 2013 and May 21, 2013 IEP team meetings?

b) **DISTRICT'S ISSUE**

1) Is the District entitled to complete its triennial psychoeducational assessment and behavior assessment of Student absent parental consent and without parentally imposed conditions or restrictions?

2) Whether District's February 11, 2013 triennial speech and language (SL) assessment of Student was appropriate such that Student is not entitled to an independent educational evaluation (IEE) at public expense?

3) Is Student entitled to an IEE in the area of social skills at public expense where Parents had not permitted District to complete its proposed assessment in this area?

c) **PROPOSED REMEDIES**. As proposed resolutions, among others, Student seeks an order from OAH directing District: 1) to fund IEE's at public expense in all areas of needs; 2) to implement Student's home-school proposed goals in the IEP dated April 24, 2013, while the IEE's are being completed; and 3) continue to place Student in a home-school program for the rest of the 2013-2014 SY. On its part, as proposed resolutions, District requests an order from OAH: 1) allowing District to complete its triennial psychoeducational assessment and behavior assessment of Student absent parental consent and without parentally imposed conditions or restrictions; 2) relieving District of its obligation to provide FAPE to Student if Parents refuse to allow District to complete its assessments of Student without parentally imposed conditions or restrictions; 3) finding that District's triennial SL assessment was appropriate and that Student is not entitled to an IEE at public expense; and 4) finding that Student is not entitled to an IEE at public expense in the area of social skills because Parents have not permitted District to complete its proposed assessment in this area.

3. Timely Disclosure of Witnesses/Exhibits. Education Code section 56505, subdivision (e)(7), provides for disclosure of witnesses and exhibits "at least" five business

[2] **On or before September 30, 2013, or at the commencement of the hearing, Student shall further clarify Issue 1(c) to identify the specific areas of needs where District has allegedly failed to develop appropriate goals.**

days prior to the hearing. The OAH's scheduling order dated June 24, 2013, ordered the production of lists of all witnesses and documents by an earlier date, that is: at least three business days prior to this PHC. As of the day of the PHC, both parties have disclosed their witnesses and exhibits through their respective PHC statements.

4. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties may use numbers or alphabets to identify exhibits. If numbers are used by both parties, each party shall place the letter "S" or "D" in front of the exhibit to designate if it is a Student or District exhibit (for example, 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. 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. Exhibit binders shall be exchanged five business days prior to the hearing in accordance with Education Code section 56505, subdivision (e)(7), unless the parties agree to a later date.

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 good cause is shown as to why it was not previously exchanged. The parties shall be prepared to make such an offer of proof. The ALJ shall determine whether an exhibit is to be admitted into evidence. Only exhibits relevant to the issues previously stated in this order shall be admitted, unless used for impeachment purposes. The fact that an exhibit is placed in an exhibit binder does not guarantee its admission.

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 disclosed in the party's prehearing conference statement except for good cause shown, and at the discretion of the ALJ.

The parties are ordered to meet and confer regarding the schedule and order of witnesses. At the commencement of the hearing, each party shall provide the ALJ with a schedule of witnesses and a time estimate for each witness's direct and cross-examinations. In light of the fact that Student has identified nine potential witnesses to be called at the hearing, and District has identified 16 potential witnesses, the parties are encouraged to review and streamline their witness lists prior to the hearing in light of the issues set identified herein above. Parties must bear in mind that evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear. Parties shall be prepared to make an offer of proof, if asked, as to why a specific witness' testimony is necessary.

The parties shall be prepared at the end of each day of hearing to discuss the witnesses to be presented the next day and the time the testimony of each such witness is expected to take. In the case of witnesses who have professional licenses and credentials, it is strongly recommended (but not ordered) that the party calling such witnesses be prepared to present copies of their *curriculum vita* (CV) or resume as exhibits, and exchange them with the other party.

6. 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.

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. 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. No request for telephonic testimony has been made by either party.

8. Motions. Other than as discussed herein, no other pretrial motions are pending. Any 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 of September 23, 2013.

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

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

13. Hearing Open To the Public. At the request of the Student, the hearing shall be open to the public.

14. Settlement. The parties are encouraged to continue working together to reach an agreement before the due process hearing. If the parties believe a mediator may assist them in settlement negotiations, they should submit a request for mediation as soon as possible. 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. ON THE DAY BEFORE THE 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 SIMULATANEOUSLY 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 and 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 24, 2013

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings