BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>SACRAMENTO CITY UNIFIED SCHOOL DISTRICT. | OAH Case No. 2015100577<br><br>ORDER FOLLOWING PREHEARING CONFERENCE |

On January 22, 2016, a telephonic prehearing conference was held before Administrative Law Judge Theresa Ravandi, Office of Administrative Hearings. Darlene Anderson, advocate, appeared on behalf of Parent and Student. Parent also participated in the PHC. Jessica Gasbarro, Attorney at Law, appeared on behalf of Sacramento City Unified School District. The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

1. Hearing Dates, Times, and Location. The hearing shall take place at Sacramento City's District Office located at 5735 47th Avenue, Sacramento, California, 95824, on February 2, 2016, at 9:30 a.m., February 3-4, 2016, at 9:00 a.m., February 8, 2016, at 1:30 a.m., February 9, 2016, at 9:00 a.m., and continuing day to day, Monday through Thursday, at the discretion of the ALJ.

As ordered in the scheduling order, the named local educational agency shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities. The named local educational agency has certified that the facilities used for this case comply with the law.

Prior to the beginning of the hearing, Sacramento City shall ensure that the hearing room is configured into a courtroom setting and shall have at a minimum (1) a table for Student and his representatives; (2) a table for District's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. Sacramento City shall provide drinking water and tissue to all parties, witnesses and the ALJ. The same hearing room shall be used for each day of hearing and shall be available at least one hour prior to the commencement of the hearing each day. The hearing room shall be locked following the hearing each night.

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, and the proposed resolutions were discussed and clarified during the PHC and are listed below.[1]

*Issue One:* Did Sacramento City deny Student a free appropriate public education during the 2013-2014 school year beginning October 9, 2013, the 2014-2015 school year, and the 2015-2016 school year through the date of hearing, by failing to allow Student to attend his neighborhood school, which resulted in Student experiencing transportation issues that caused Student to be truant and tardy?[2]

*Issue Two:* Did Sacramento City deny Student a FAPE during the 2014-2015 school year and the 2015-2016 school year through the date of hearing by:

a. failing to allow Student access to the general education curriculum in all core content areas;

b. failing to develop and implement a behavior plan which prevented Student from participating in classroom activities and resulted in staff removing Student from class or in Student leaving class;

c. failing to ensure the timely completion of agreed-upon independent psycho-educational and speech and language educational evaluations;

d. setting guidelines for the independent assessors, which compromised the independence of the December 2015 independent psycho-educational and speech and language and evaluations;

e. failing to change Student's placement from a learning disabled classroom to a communication-based classroom during the 2015-2016 school year until January 1, 2016;

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

[2] Sacramento City's objection that it was not on notice from Student's complaint of the time frame for this issue was noted for the record and overruled.

f. fostering a hostile environment in Student's classroom;[3] and

g. implementing the computer program, "I Learn", which was not part of Student's operative individualized education program?

*Issue Three*: During the 2014-2015 and the 2015-2016 school years through the date of hearing, did Sacramento City deny Student a FAPE by failing to implement his operative IEP?

*Proposed Resolutions:* Student seeks the development and implementation of an appropriate IEP including supports to help him transition from task to task. Student also seeks compensatory education including tutoring and counseling.

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 shall serve their evidence binders on each other at least five business days prior to the first day of hearing, 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.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not timely exchanged shall not be admitted into evidence at the hearing unless 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. Sacramento City agrees to make all of its current employees who have been identified as witnesses, available for hearing and to inform Student if any of the identified witnesses are no longer currently employed by District. 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 and at the discretion of the ALJ.

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

[3] Sacramento City objected to this issue as being beyond OAH's jurisdiction. This objection was noted for the record and overruled.

PHC, Student identified the following 13 potential witnesses: Student, Parent, Frank Maestas and his assistant "La", Jonathan Andrew, Michael Trotter, Jacki Glasper, Phillip Dea, Enrique Flores, Darlene Anderson, Al Rogers, Van Tuil and her assistant Mr. Wilson. In its PHC statement, Sacramento City identified 30 potential witnesses, 8 of whom are shared. Sacramento City plans on narrowing its witness list.

Given the allotted hearing time of five days, the parties are ordered to meet and confer by January 27, 2016, as to the scheduling of witnesses and the projected length of their direct and cross examinations.

At the start of the hearing, the parties shall present a proposed joint schedule of witnesses for the entire hearing, with time estimates. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony, to ensure that this matter is concluded within the time allotted, based upon the parties' time estimates as well as on the issues presented.

5. Order of Presentation of Evidence and Scope of Witness Examination. In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) Here, Student has the burden of proof. Student shall present his evidence first, followed by Sacramento City. Each witness shall be called to testify only once, except for rebuttal purposes, and all parties shall examine the witness on all issues when the witness is first called. 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. The order in which the parties present their cases in chief shall be subordinate to the need for each witness to appear only once.

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. Neither party requested telephonic testimony.

7. Electronic Recording of Hearing.

a. Audio Recording. Each party's motion to make an audio recording of the hearing is granted, subject to the following conditions: 1) that OAH's recording is the only official recording; 2) that the recording will be turned on and off at the same time as the ALJ's recording, in order to avoid recording conversations while off the record; and 3) that operation of the party's recording mechanism will not be allowed to delay the hearing.

b. Video Recording. No party, witness or anyone else present may make any video recording of any part of the proceedings. Any person doing so shall be subject to sanctions.

8. Motions. No pretrial motions are pending or contemplated. 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 January 22, 2016.

9. Compensatory Education and 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.**

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 Parties 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.

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 staff, identified in the scheduling order, at (916) 263-0880, as soon as the need is known. Additional information concerning requests for reasonable accommodation is available on OAH's website at: http://www.dgs.ca.gov/oah/Home/Accommodations.aspx.

13. Hearing Open To the Public. At the request of Student, the hearing will be open 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: January 22, 2016

**/S/**
THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings