BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. YUBA CITY UNIFIED SCHOOL DISTRICT AND SUTTER COUNTY SUPERINTENDENT OF SCHOOLS,	OAH CASE NO. 2013120207
YUBA CITY UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013110182 ORDER FOLLOWING PREHEARING CONFERENCE

On January 24, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Peter Paul Castillo, Office of Administrative Hearings (OAH). Martha A. Millar, Attorney at Law, appeared on behalf of Student. Paul R. Gant, Attorney at Law, appeared on behalf of Yuba City Unified School District (District). Heather M. Edwards, Attorney at Law, appeared on behalf of Sutter County Superintendent of Schools (County) The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The due process hearing shall take place on February 3 through 6, 2014. The hearing shall begin at 9:00 a.m. and end at 5:00 p.m., except for February 3, 2014, when the hearing shall begin at 1:30 p.m., unless otherwise ordered. The hearing shall take place at the District's offices, located at 750 Palora Avenue, Yuba City, California 95991.[1]

[1] At a minimum for the hearing, 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 County's representatives; (4) one table for the ALJ with a nearby electrical outlet; and (5) one witness table. The District shall ensure that all parties and the ALJ have drinking water and tissue available to them.

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.

Student's Issues for Hearing

Issue 1: Did District's and County's November 8, 2012 and August 19, 2013 individualized education plans (IEP's) deny Student a free appropriate public education by failing to:

a. Provide Student with adequate one-to-one services by a licensed vocational nurse (LVN) to meet his unique needs regarding diabetes and communication; and

b. Offer Student a placement that met his unique needs, especially sensitivity to sound, and classroom that contains too many students?

Issue 2: Did District and County deny Student a FAPE by failing to provide him with special education and related services from February 21, 2013, through the present, and failing to permit Parent to choose the LVN or family member to provide Student with diabetic care services at school?

Proposed Resolutions: Student requests that District and County provide him with an educationally related, qualified LVN who has appropriate experience and training regarding diabetic, non-verbal autistic students. Further, that this LVN be familiar with Student's unique health care and communication needs, and that Parent has the right to reject District's and County's LVN selection and to choose an LVN or other qualified person if she chooses. Additionally, Parent will not be required to train the LVN. District and County shall place Student in a certified non-public school, preferably a program through Pacific Autism Learning services, or, if a certified non-public school placement is not available, a hybrid autism program at school, community and home with no more than eight students at the school class. District and County shall reimburse Parent for all educationally related services, including, but not limited to, LVN services, one-to-one aide services, and costs related to Butchie's Pool. Finally, Student requests compensatory education in the areas of occupational therapy, speech and language therapy, adaptive physical education, assistive technology and transition services, with District and County providing transportation to these compensatory education services and the one-to-one LVN.

District's Issues for Hearing

Issue 1: Does District's August 19, 2013 IEP, including its offer of a one-to-one LVN employed by either County or District, provide Student with a FAPE in the least restrictive environment?

Issue 2: Does Parent need to permit District to have meaningful access to Student's physicians and physician orders regarding his diabetic care so that District may develop a diabetes medical management plan?

Proposed Resolution: The District requests an order that its August 19, 2013 IEP provides Student with a FAPE in the least restrictive environment. The District also seeks an order that Parent provide District with relevant medical orders and information so District may provide Student with a one-to-one LVN.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. District and County shall submit a joint exhibit binder. 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/County 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. By 5:00 p.m. on January 27, 2014, the parties shall 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.

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 January 29, 2014, as to the schedule of witnesses, and 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. By 1:00 p.m. on January 31, 2014, each party shall serve on the other party and on the ALJ, the final witness list, including the anticipated order of the witnesses to be called at the hearing, an estimate of the length of time

for the direct examination of each witness the party actually intends to call, along with time estimates for the testimony of any additional witnesses the party may call, depending on the flow of the hearing and the evidence.[2] 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 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 ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

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 and OAH grant the party's request. No party requested telephonic testimony.

7. Order of Presentation of Evidence. This matter is consolidated. The order of presentation of evidence shall be as follows: Student and then District. If a witness is to be called by more than one party, the parties shall conduct direct and cross-examination so that the witness need only testify once.

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 24, 2014.

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.

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[2] Parties shall not mail a hard copy of any document to OAH that has already been filed by facsimile transmission.

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 Parent, the hearing will be open to the public.

14. Settlement. The parties are encouraged to continue their attempts 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. If a settlement is reached five business days or fewer before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact by telephone at (916) 263-0880. 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. IF A FULL AND FINAL SETTLEMENT IS REACHED AFTER 5:00 P.M. ON THE LAST BUSINESS DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035, AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. The 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: January 27, 2014

/s/
PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings