

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2012090744

v.

VICTOR VALLEY UNION HIGH SCHOOL
DISTRICT,

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2012070653

V.

VICTOR VALLEY UNION HIGH SCHOOL
DISTRICT,

ORDER FOLLOWING PRE-HEARING
CONFERENCE; ORDER DENYING
MOTION FOR CONTINUANCE; ORDER
GRANTING MOTION FOR OFFICIAL
NOTICE; ORDER DENYING MOTION
TO DISMISS IN ITS ENTIRETY;
ORDER QUASHING SUBPOENAS;
ORDER DENYING MOTION TO
COMPEL AND MOTION FOR
SANCTIONS

On March 6, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Deborah Myers-Cregar, Office of Administrative Hearings (OAH). Jack Clark, and Michelle Jordan, Attorneys at Law, appeared on behalf of Victory Valley Union High School District (District). Parent appeared on behalf of Student. The PHC was 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 March 18, 19, 20, 21, and March 25, 26, and 28,¹ continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. The hearing will start at 1:30 on March 18 and 25, and at 9:30 all other days, unless ordered by the ALJ. The hearing shall take place at the District's offices

¹ The hearing will go dark on March 27, 2013.

located at Victor Valley Union High School District, 16350 Mojave Drive, Victorville, CA 92392.

The parties' joint request to go dark the week of March 25-28, when numerous District witnesses, teachers, and IEP team members are unavailable for a two week spring break, and continue those days to April 8, 9, 10, and 11th, 2013, is denied.

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. Procedural History and Official Notice of OAH Order.

The parties agree that they entered into a March 16, 2010 settlement agreement which resolved all claims in OAH case 2009120327.

Official Notice is taken of the prior Decision and Order, and Corrected Decision of ALJ Lehrman, OAH case 2011080031 consolidated with 2011080382, which Student filed on July 21, 2011, alleging 29 issues against the District. The Order was not appealed, and has a binding effect on those issues. The Factual Findings, Legal Conclusions, Remedies, and Order covered the time period of April 6, 2010, through the end of the 2012 extended school year, and are set forth below in relevant part in italics:

Remedies

211. *As established above, District denied Student a FAPE by performing an inappropriate FAA on or around May 21, 2010 (Student's Issue 3); failing, at and after the January 5, 2011, manifestation IEP, to conduct a FAA and create a BIP (Student's Issue 14); failing to provide appropriate aide support from March 21 through 25, 2011 (Student's Issue 18(b)); failing to provide appropriate behavioral supports during and subsequent to an incident on or around April 6, 2011, resulting in a 12-day suspension and a denial of access to campus on April 12, 2011 (Student's Issue 19); and failing to offer an appropriate placement in the LRE in the June 2, 2011 IEP (Student's Issue 23(b); District's Issue (1)). Student seeks numerous remedies for these denials of a FAPE including placement, services, assessments, and compensatory education.*

212. *Remedies under the IDEA are based on equitable considerations and the evidence established at hearing. (Burlington v. Department of Education (1985) 471 U.S. 359, 374 [105 S.Ct. 1996, 2005].) School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (Student W. v. Puyallup School District (9th Cir. 1994) 31 F.3d 1489, 1496.) The conduct of both parties must be reviewed and considered to determine whether relief is appropriate. (Id. at p. 1496.) These are equitable remedies that courts may employ to craft "appropriate relief" for a*

party. An award need not provide a “day-for-day compensation.” (*Id.* at p. 1497.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student’s needs. (*Reid ex rel. Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” (*Ibid.*)

213. Based upon the equitable considerations and the Factual Findings of this decision, District will be required to place Student into a SDC four periods a day for core subjects based upon state standards. The remainder of the day shall be in a collaboration model general education setting, with a general education teacher and a special education teacher providing push-in RSP support, for two periods daily for a core subject and an elective. Student shall also be placed in general education for physical education. Student shall be mainstreamed 44% of his day. Based upon his October 23, 2009, IEP and the offer made the following year at the June 8, 2010, IEP, as well as the discussion at the June 2, 2011, IEP, this placement is reasonably calculated to provide Student with educational benefit in the LRE.

214. As Papez opined, Student had been making progress in his behavior and social skills, and should move on to high school. Therefore his placement for the 2011-2012 school year will be his home high school unless the parties agree otherwise.

215. Except for OT as discussed below, the related services that were offered in the June 2, 2011, IEP were appropriate and may be implemented: speech and language once a week for 30 minutes; counseling three times per month for 30 minutes; full-time 1:1 NPA aide services plus ten hours a month supervision, both from CIBA; and ESY with these related services, and transportation.

216. The modifications and accommodations that were discussed at the June 2, 2011, IEP were also appropriate and shall be implemented. Some of the items discussed were not clearly defined and cannot be implemented. Therefore the remedy is specified as the following, which were clearly stated in the IEP: alpha smart software, a portable keyboard; a digilock for PE, extra time for assignments, tests and quizzes; use of graphic organizers; preferential seating; and prompting as necessary and consistent with goals.

217. With regard to PLOPS, goals, and related services other than OT, the offer made at the June 2, 2011, was appropriate and shall be implemented. The responsible persons listed on that IEP to accomplish some goals include “Excel” staff. Since Excel is a model that exists only at LMS, for those goals District may replace “Excel” staff with general education teachers, RSP teachers and Student’s NPA aide.

218. Since Student’s sensory needs were to be addressed at Perspectives, the offer of OT was not appropriate and must be modified to address Student’s Goals numbered 1-2, 5 and 16-17 in the area of OT. Previously, OT had been provided by and NPA 45 minutes per week, and this continues to appear appropriate.

219. *For the time being, the most appropriate behavior plan that District can systematically implement is the UHS BSP. It shall serve as Student's behavior plan pending a new FAA that must be conducted and a new BIP that must be developed and implemented.*

220. *Based on Student's individualized needs, this is the appropriate equitable remedy, as it is reasonably calculated to provide the educational benefits Student would have likely accrued from the special education placement and services that District should have provided Student. (Factual Findings 1-269; Legal Conclusions 1-219.)*

ORDER

1. *Student's placement for the 2011-2012 school year shall be his home high school unless the parties agree otherwise.*

2. *Student shall be mainstreamed at least 44% of his day.*

3. *For two periods daily for a core subject and an elective, District shall place Student in a collaboration model general education setting, with a general education teacher and a special education teacher providing push-in RSP support.*

4. *Student shall receive general education PE;*

5. *District shall place Student into a SDC for the balance of the school day for core subjects based upon state standards.*

6. *Except with regard to OT, the related services that were offered in the June 2, 2011, IEP shall be implemented, as follows: speech and language once a week for 30 minutes; counseling three times per month for 30 minutes; full-time 1:1 NPA aide services plus ten hours a month supervision, both from CIBA; ESY with these related services, and transportation.*

7. *The following modifications and accommodations shall be implemented: alpha smart software, a portable keyboard; a digilock for PE, extra time for assignments, tests and quizzes; use of graphic organizers; preferential seating; and prompting as necessary and consistent with goals.*

8. *The goals stated in the June 2, 2011, IEP were appropriate and shall be implemented. For those goals stating "Excel," District may replace "Excel" staff with general education teachers, RSP teachers and Student's NPA aide.*

9. *OT shall be provided by an NPA 45 minutes per week and shall address Goals numbered 1-2, 5 and 16-17.*

10. *Within 45 days of the date of this decision, District shall conduct a new FAA to target the behaviors of: physical aggression (including assaults, knocking over tables, throwing books; fighting); threats; insults (including teasing or name-calling); tantrums, disobedience (including refusal, defiance, or noncompliance); running away/bolting; blurting out in class; repetitive talk; trading (including giving away contraband, selling or stealing); lying; and inappropriate sexual conduct (including cursing, obscenities, profanity in oral or written form, and vulgarity or harassment toward females) which shall be completed and an IEP meeting convened within legally required timelines. At that IEP, the team will develop a BIP. Pending a new FAA and BIP, the UHS BSP shall be implemented.*

11. *If Mother does not consent to the FAA, the relief granted in this Decision shall be null and void.*

12. *For purposes of stay put, the above orders shall constitute Student's current educational placement.*

3. Issues and Proposed Resolutions. The following issues were identified and discussed at the March 6, 2013 PHC. Beginning with OAH case number 201207065, the ALJ sequentially numbered the clearly identified issues beginning with 1 and ending with 61. The clearly identified issues in OAH case number 2012090744 were then numbered from 62 to 109." Of the original 109, many issues were consolidated, dismissed by the Student, or by the ALJ, as indicated. ² Those issues dismissed by parent are dismissed with prejudice and shall not be litigated at the hearing. The parties agreed to the presentation of issues in the following timeline:

A. PRIOR TO ALJ LEHRMAN'S MARCH 2012 DECISIONS AND ORDERS

A. Did District deny Student a FAPE prior to ALJ Lehrman's Order of March 2012, by:

- 1) Failing to hold an IEP meeting on October 2010 to discuss Student's need for tutoring? (Issue 1) This issue was dismissed by the ALJ, as it was covered by Judge Lehrman's Order.
- 2) Failing to use response to intervention? (Issue 2). This issue is dismissed by the ALJ because IDEA does not require the use of response to intervention.
- 3) Failing to provide Student with weekly Lakeview Middle School progress reports as agreed, including speech, occupational therapy, counseling, from August 2011 through March 2012? (Issues 3, 97, 99) Parent moved to dismiss this issue.
- 4) Failing to offer educational academic assessment and academic therapy between May 2010 through July 2011, and September 2010 through June 20, 2012? (Issues 6, 7, 80) These issues was dismissed by the ALJ, as it was covered by ALJ Lehrman's Order and ALJ Castillo's Order.
- 5) Failing to discuss student's progress towards his IEP goals, failing to include all areas of need in the IEP progress reports, from October 2010, and August 2011? (Issues 76, 77, 78) This issue is dismissed because it is covered by ALJ Lehrman's Order.

² ALJ Peter Paul Castillo dismissed Issue 4 (1BBBB) failing to offer college preparation classes, and Issues 6 and 7 (2), failing to conduct an educational academic assessment prior to June 2, 2011, and failing to complete 98 hours of home tutoring.

- 6) Failing to provide IEP progress notes from September 2011 through June 20, 2012? (Issue 79) This issue is dismissed because it is covered by ALJ Lehrman's Order, and by other issues already covered.
- 7) Failing to conduct a Career Assessment? (Issue 5) Parent moved to withdraw this request.
- 8) Failing to implement an agreement for 25 hours of SES in the April 18, 2011 IEP? (Issues 91, 103)
- 9) Failing to complete Student's 98 hours of tutoring which was owed pursuant to the April 18, 2011 IEP. (Issue 7) Issue 7, failing to complete student's 98 hours of tutoring, was dismissed by ALJ Castillo.
- 10) Failing to provide a full-time NPA aide, providing a District Aide between August 22, 2011 and March 26, 2012 who was not appropriately trained; by lying, misrepresenting, failing to implement, and verify, that Student had a one-to-one NPA aide and supervision hours on August 4, 2011, August 26, 2011, and December 2011, pursuant to the April 28, 2011 manifestation IEP, through the date of ALJ Lehrman's Order? (Issues 12, 13, 14, 1517, 17, 19, 20, 90, 92, 93)
- 11) Causing Student to be retained from advancing to Ninth grade? (Issues 52, 94)
- 12) Refusing to provide independent educational evaluations (IEE's) for psychological assessments from October of 2010 to September of 2012? (Issue 63)
- 13) Failing to follow the school psychologist recommendations of the May 21, 2010 assessment? This issue is dismissed by the ALJ because that was covered by Judge Lehrman's Decision. (Issues 64, 65)
- 14) Failing to implement an agreement to provide Student with services and accommodations, including an aide during the after school mentor program between October 2010 through September 2012, pursuant to unidentified IEPs? (Issues 66, 67, 68, 70, 71). Parent moved to dismiss everything before Student's Eighth grade year, 2010 through 2011.
- 15) Causing the NPA to not provide progress reports from October 2010 through July of 2011, and therefore Student didn't benefit from NPA? (Issues 8, 69) Parent moved to dismiss this issue at the PHC.
- 16) Failing to give Student a physical education assessment, have an aide during PE and to observe the locker room, October 2010 through August 2011? (Issues 72, 73, 74) Parent moved to dismiss this issue.

- 17) Failing to provide Student with an aide on the bus December 2010 through August 2011 during Eighth grade? (Issue 75) Parent moved to dismiss this issue.
- 18) Failing to use the UHS behavior plan between June 13, 2011 through July 2011? (Issues 9,10) Parent moved to dismiss this issue.
- 19) Failing to use state standard curriculum during 2011 ESY? (Issue 11)
- 20) Failing to give Student homework and schoolwork assignments between January 2012 and March 2012? (Issue 21)
- 21) Failing to hold an IEP to offer tutoring and independent study from August 2011 through June 2012 when student received all failing grades? (Issue 86) Parent moved to dismiss this issue.
- 22) Failing to implement and provide student with services, an aide, aide supervision, and accommodations outlined in April 18, 2011 IEP from August 2011 through March 25, 2012, when Student was unilaterally placed? (Issues 87, 90, 91, 92, 93) Parent moved to dismiss this issue.
- 23) Failing to provide student with speech, occupational therapy, and counseling progress reports for discussion in Ninth grade, from August 20, 2011 through March 2012? (Issues 33, 97, 99) Parent moved to dismiss this issue.
- 24) Failing to recommend that parent receive behavior training? (Issue 105) Parent moved to dismiss this issue.
- 25) Failing to assess Student, between September 10, 2010 through June 20, 2012, in all areas of suspected disability, including assistive technology, academics, motor, social and cognitive, career, educational therapy, therapeutic therapy, physical education, and a Functional Analysis Assessment? (Issues 60, 80, 81, 82) Parent moved to dismiss this issue with the exception of her May 2012 request for a recreation therapy assessment, which is incorporated below under the assessment section.
- 26) Failing to conduct an educational therapy assessment between August 2011 through March 2012, after student received all fails in ninth grade from August 2011, through March 12, 2012, and between April 2012 through June 2012? (Issues 83, 84) Parent moved to dismiss this issue.
- 27) Failing to restore, remediate, and rehabilitate Student's level of functioning, and to restore motor, social and cognitive function, develop coping skills, and integrate skills into community settings between October 2010 and August 2011? (Issues 81, 82) This issue is dismissed because it is not a claim that Student was denied a FAPE.

28) Failing to provide accommodations at the Spring 2011 California Modified Assessment (CMA)? See the Accommodations section below.

B. ALJ Lehrman's March 12 and March 26, 2012 Order and Student's three days of attendance April 10, 11, and 12, 2012

B. Did District deny Student a FAPE by not implementing ALJ Lehrman's March 12, and March 26, 2012, Order when Student was enrolled at Victor Valley High School on April 10, 11, and 12, 2012, by:

- 1) Not using ninth grade curriculum? (Issue 31)
- 2) Not providing accommodations in the form of preferential seating, a digilock for PE, and Alphasmart, a clean Cadet Core uniform, receiving homework, a course syllabus, coursework, receiving daily communication logs from the teacher and daily behavior logs from the aide? (Issues 8, 31, 33, 34, 35, 95, 96)
- 3) Not providing two periods of general education daily for core subjects and an elective, not placing Student in RSP and an SDC for the balance of the day for core subjects? (Issue 32)
- 4) Not providing related services of a full time NPA aide, speech, OT, and counseling? (Issue 32),
- 5) Not following the UHS behavior implementation plan? (Issue 32)

C. APRIL 2012 through July, 2012 unilateral placement

C. Did District deny Student a FAPE between April 2012 and July 2012, during his unilateral private placement by:

- 1) Failing to provide individualized instruction and related services, including an NPA aide, speech, OT, and counseling at the private school, between March 26, 2012 and July 21, 2012, when he was not enrolled in the District? (Issues 32, 46, 56, 88, 106)
- 2) Failing to conduct the FAA which parent consented to in April 2012, when parent enrolled Student in a private placement after April 13, 2012? And whether Student is entitled to an IEE at public expense? (Issues 27, 28, 29, 30,)
- 3) Disenrolling Student and threatening parent that Student could not be dually enrolled in the District and in the unilateral private placement? (Issues 61, 88)
- 4) Failing to offer ESY for 2012, and failing to offer his NPA aide and supervision for ESY? (Issues 89, 100, 101)

D. MAY 4, 2012 IEP

D. Did District deny Student a FAPE at the parent-requested May 4, 2012 IEP by:

- 1) Predetermining the IEP when it offered Student placement and related services consistent with Judge Lehrman's Order? (Issue 35)
- 2) Denying meaningful parental participation, by not considering concerns that CIBA/Leafwing was not an appropriate provider because they and the district did not want to provide parent with daily log books? (Issue 35)
- 3) Failing to offer and provide special education services, a one-to-one NPA aide, accommodations, modifications, related services, at a different placement, such as the unilateral private placement and independent study? (Issues 35, 107, 108, 109)
- 4) Offering Student placement at his home school, consistent with Judge Lehrman's Order, but which was inappropriate due to violence, fighting and riots? (Issue 35)
- 5) Failing to consider parent's concern that Student's educational needs had changed, and that it should discuss and offer the more restrictive setting of independent study, private Christian school, and on line courses? (Issues 35, 107, 108, 109)
- 6) Failing to discuss what services and accommodations Student received on April 10, 11 and 12, 2012? (Issues 36 and 104)

E. May 24, 2012 Annual IEP

E. Did District deny Student a FAPE at the May 24, 2012 IEP team meeting by offering Student placement at Victor High School, Fourth grade curriculum, and related services consistent with Judge Lehrman's Order, instead of a different placement, by:

- 1) Failing to consider that Student's educational needs had changed and that he required independent study, use of a laptop, and ninth grade curriculum? (Issues 36, 37, 38, 39, 41, 42, 47, 51, 107, 108, 109)
- 2) Failing to consider parent's concerns and Student's progress at his private school and on line courses? (Issues 36, 37, 38, 39, 41, 47, 48, 55)
- 3) Failing to consider more restrictive placements, such as private school, charter schools, independent study, and on line high schools, before it offered Student placement at Victor Valley High School with fourth grade curriculum? (Issues 38, 41, 42, 43, 47, 55)

- 4) Failing to use current educational data, including new assessments and 'educational therapy assessments,' when it developed goals and present levels of performance determining Student was at the Fourth grade level, non-diploma track, and then retained him in the eighth grade instead of considering his credit recovery efforts? (Issues 36, 40, 41, 44, 47, 48, 52, 53, 83)
- 5) Failing to offer the RSP teacher, special education teacher and school psychologist to work in collaboration with Sunland, the on-line tutors, and general education teachers; with advancement to ninth grade with ninth grade curriculum for English language arts, science, math; accommodations, a full time NPA aide, 10 hours of NPA supervision, close notes, alpha smart software and keyboard, a digilock, and related services; and a daily parent communication log? (Issues 35, 38, 43, 41, 42, 43, 46, 47, 49, 50, 51, 52, 56, 57, 58)
- 6) Failing to discuss what services and accommodations Student received on April 10, 11 and 12, 2012? (Issues 36 and 104)
- 7) Failing to discuss career planning and training when Student was 14 years old? (Issues 38, 45) Parent moved to dismiss the career assessment issues.
- 8) Failing to change Student's NPA aide upon parent request? (Issues 54)

F. ACCOMODATIONS FOR CALIFORNIA MODIFIED ASSESSMENT (CMA)

F. Did District deny Student a FAPE during Spring 2011 and 2012 by:

1) Failing to provide Student with testing accommodations, including extra time and having the test read to him during CMA State testing. (Issues 62, 98)

G. SUMMER 2012 ESY

G. Did District deny Student a FAPE for Summer 2012 ESY by:

1) Failing to use State standards and offering an inappropriate placement and program consisting of a functional skills program at the Goodwill without an aide, instead of offering independent study and on line courses? (Issues 11, 38, 59, 89, 100, 101)

2) Failing to offer Student placement and related services for 2012 ESY at Student's home school? (Issues 89, 100, 101)

3) Failing to provide Student with ESY services when he was not enrolled in the District? (Issue 89)

H. FALL 2012

H. Did District deny Student a FAPE during Fall 2012 by:

- 1) Telling parent that the only way Student could attend a district school in the fall of 2012 was by enrolling back into the District, after parent had unilaterally withdrawn Student and enrolled him in a private Christian school? (Issue 61, 88, 106)

I. SEPTEMBER 16, 2012 IEP

I. Did District deny Student a FAPE in September 2012 by:

- 1) Conducting an impartial AT assessment, when parent requested an IEE (Issue 102)

J. OCTOBER 28, 2012

J. Did District deny Student a FAPE on October 28, 2012, by:

- 1) Failing to provide an aide at his private Christian school? (Issues 16, 17) Parent moved to dismiss this issue.

K. ASSESSMENTS

K. Did District deny Student a FAPE by failing to timely conduct and complete a:

- 1) Career Assessment? Parent moved to dismiss this issue. (Issue 60)
- 2) Assistive Technology Assessment? (Issues 60, 102)
- 3) Functional Analysis Assessment? (Issues 27, 28, 29, 60)
- 4) Recreation Therapy Assessment? (Issues 71, 72, 73, 74, 81, 82)

L. STUDENT RECORDS

L. Did District deny Student a FAPE from February through June 2012 by:

- 1) Denying him a free copy of his Student records? (Issues 22, 23, 24, 25, 26)

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. 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 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 and complete 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.

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, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

The parties are ordered to meet and confer by March 13, 2013, as to the schedule of witnesses. The witnesses shall be referred to in the following number order.

The following witnesses will be called to testify by Student based on Student's identification of the issues they are expected to testify about:

- A. Issues before ALJ Lehrman's Order, Compensatory tutoring per IEP and 2011-2012 application approved
 - 1. Gayle Hinizumi
 - 2. Parent
 - 3. Jeannette Anderson
- B. April 10, 11, 12, 2012
 - 4. Lt. Cook Atkins
 - 5. Ms. Lucia
 - 6. Denny M.
 - 7. Ms. Valenzuela
 - 8. Robert Tolson
 - 9. Michael Barrett
 - 10. Michael Knight
 - 11. Richard Masters
 - 12. Runnel Wood
 - 13. Lisa Armita
- C. April 13 through July 2012, including FAA assessment
 - 1. Ms. Gayle Hinizimi

- D. May 4, 2012 IEP
 - 14. District members of the IEP team
 - 12. Aide agency Runnel Wood
 - 8. Aide agency Mr. Tolson
 - 15. DMH Dan Woods
- E. May 24, 2012 IEP
 - 16. District members of IEP team
 - 17. Counselor Ms. Mosito
- F. Accommodations for Spring 2011 and 2012 CMA
 - 18. Mr. Malday
 - 9. Michael Barrett
- G. Summer ESY
 - 15. The May 24, 2012 IEP team
- H. Fall 2012, enrollment, and AT assessment
 - 1. Gayle Hinizimi
- I. September 16, 2012 IEP
 - 1. Gayle Hinizimi
- J. Dismissed
- K. Assessments
 - 1. Gayle Hinizimi
- L. Student Records
 - 1. Gayle Hinizimi

The following witnesses will be called to testify by District:

- 1. Gayle Hinizimi
- 2. Denise Edge
- 3. Brian Musslewhite
- 4. Douglas Kubacki
- 5. Jessica Martinez
- 6. Bob Greer
- 7. James Gaines
- 8. Susan Raymond
- 9. Stacie Pasimio

10. Chris Douglas
11. Maria Gordon
12. Michael Barrett
13. Cheryl Angel
14. Cherish Dowerson
15. Parent
16. Richard Holland
17. Student

The witness schedule will be finalized at the commencement of the due process hearing. The ALJ shall have discretion to further limit these witnesses in the interests of justice.

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 attempt to reach agreement on a witness list for the first day of hearing. The District shall have witnesses available in case agreement on a witness list is not reached. 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.

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. Limited rebuttal evidence will be permitted, subject to an offer of proof.

7. Telephonic Testimony. Neither party has requested telephonic testimony.

8. Timely Disclosure of Witnesses/Exhibits. Education Code section 56505, subdivision (e)(7), provides for disclosure of witnesses and exhibits “at least” five business days prior to the hearing

9. Order of Presentation of Evidence. Student shall present her case in chief first.

10. Motions. Rulings on motions made at PHC

Student’s motion to compel the production of documents of Excelsior Education Charter School, Youth Charter School, Options for Youth, and the attendance of Marie Silva, Jess Descalota, William Flynn, and Kathy Lento is denied. There are no issues raised regarding these schools and records.

Student’s motion for sanctions against Excelsior Charter School for not appearing and complying with the Subpoena Duces Tecum is denied.

The Motions to Quash the subpoenas served on Excelsior Education Charter School, Marie Silva, Jess Descalota, and William Flynn are granted.

The District's Motion for the ALJ to take Official Notice of Judge Lehrman's Decision and Order, and Corrected Decision and Order, is granted. Neither party appealed that Decision. That Decision is deemed to establish FAPE for the 2011-2012 regular school year and 2012 ESY. That Order is also deemed to set forth the stay-put placement in the event of a dispute between the parties.

Although the parties extensively discussed the 109 issues presented in Student's two complaints, Student agreed to dismiss a considerable number of those issues. Other issues were dismissed by the ALJ due to their internal repetition. Other issues were dismissed by the ALJ because Judge Lehman's Decision covered the same issues and remedies as plead by Student. District may renew its motion to dismiss issues based on collateral estoppel and res judicata, now that the issues have been condensed and clarified.

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

12. 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.

13. 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.

14. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for translation services.

15. Hearing Closed To the Public.

16. 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.

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

IT IS SO ORDERED.

Dated: March 12, 2013

/s/

DEBORAH MYERS-CREGAR
Administrative Law Judge
Office of Administrative Hearings