BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. ANTIOCH UNIFIED SCHOOL DISTRICT,	OAH Case No. 2015030589
ANTIOCH UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2015020590 ORDER FOLLOWING PREHEARING CONFERENCE AND GRANTING CONTINUANCE OF DUE PROCESS HEARING DATES

On April 24, 2015, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Joy Redmon, Office of Administrative Hearings. Attorney Nicole Hodge Amey appeared on Student's behalf. Attorney David Mishook appeared on Antioch Unified School District's behalf. The PHC was recorded.

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

1. Request to Continue Due Process Hearing, Hearing Dates, Times, and Location. At the outset of the PHC, Student's counsel requested the hearing be rescheduled to begin on May 6, 2015. Although Antioch's attorney did not oppose the request, Student's request could not be accommodated by OAH's calendar. The parties jointly requested the hearing be continued to Tuesday, May 26, 2015. No prior continuances have been granted in this consolidated case. The request for continuance was granted and the matter continued to May 26, 2015.

The hearing shall take place at Antioch's offices located at 510 G. Street, Antioch, CA 94509**.** It is scheduled for May 26, 2015 from 1:30 p.m. to 5:00 p.m., May 26, and May 27, 2015, from 9:00 a.m. to 5:00 p.m. Antioch shall ensure that the facility for the hearing fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.

The parties shall immediately provide hearing dates to proposed witnesses, and shall subpoena witnesses if necessary, to ensure their availability. Failing to properly notify or subpoena a witness does not constitute good cause for their unavailability.

2. Issue and Proposed Resolutions. The issues below were discussed at the PHC and reworded for clarity.

Student's issues are as follows[1]:

Issue 1: Is Student entitled to an exception to the statute of limitations applicable to special education due process cases based upon the specific misrepresentation by Antioch staff in November 2011 that Student met her goals when no documentation of progress was provided to Parent?

Issue 2: Did Antioch deny Student a FAPE from June 2013 through the present by failing to assess her in all areas of suspected disability, specifically in speech and language, health, and academics?

Issue 3: Did Antioch deny Student a FAPE during the 2011-2012 school year by failing to draft appropriate IEP goals and objectives in all areas of need?

Issue 4: Did Antioch deny Student a FAPE during the 2012-2013 school year by failing to draft appropriate IEP goals and objectives in all areas of need?

Issue 5: Did Antioch deny Student a FAPE during the 2013-2014 school year by:

a. failing to draft appropriate IEP goals and objectives in all areas of need; and

b. failing to offer Student home and hospital instruction?

Issue 6: Did Antioch deny Student a FAPE during the 2014-2015 school year by:

a. failing to draft appropriate IEP goals and objectives in all areas of need;

b. failing to offer home and hospital instruction; and

c. From January 2015 through the present by failing to:

i. give Parent prior written notice of Antioch's refusal to preform requested assessments to determine eligibility in other categories;

[1] All issues alleged by Student are included in this PHC order; however, if Student does not prevail on *Issue 1*, only the issues alleged within the statutory period will be adjudicated in the final decision.

ii. conduct a reevaluation prior to exiting Student from special education; and

iii. give Parent prior written notice of its intent to exit Student from special education?

Student's Proposed Resolutions: Antioch shall fund speech and language, health, and academic independent educational evaluations; provide one-to-one compensatory education in all areas of need including speech and language, academic instruction in math, language arts, and counseling; provide measurable goals and on-going special education services in speech and language and other areas of need; establish Student as eligible under OHI and develop a home and hospital plan; evaluate Student prior to exiting her from special education; implement Diagnostic Center recommendations; consider parent concerns and options; and ensure Student receives a FAPE.

Antioch's Issue is as follows:

Issue: May Antioch exit Student from special education services without parental consent?

Antioch's Proposed Resolution: A finding that Student is no longer eligible for special education as a student with a speech or language impairment, and an order permitting Antioch to exit Student from special education over parental objection.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall number exhibits in a way that clearly identifies the party offering the exhibit (for example "S-1" for Student or "D-1" for District). All pages of a party's exhibit binder shall be consecutively numbered**.** Each exhibit will consist of one document or short series of documents that are related (for example, an individualized education program shall have its own exhibit rather than a single exhibit for all IEP's). Each exhibit binder shall contain a detailed table of contents. At the hearing, each party shall supply an exhibit binder containing its exhibits for the ALJ, and a second exhibit binder for the 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.

Each party is expected to comply with Education Code section 56505, subdivision (e)(7) and timely serve an exhibit binder containing its respective exhibits on the other party. 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 will not be admitted into evidence at the hearing unless it is supported by a written declaration under penalty of perjury, and the ALJ rules that it is admissible.

4. Witnesses.

a) Each party is responsible for procuring their own witnesses; however, the parties shall make witnesses under its control reasonably available to the other party.

Witnesses shall be scheduled in a way that avoids delays and minimizes or eliminates having to call a witness twice or out of order.

b) **The parties are ordered to meet and confer to develop a proposed joint witness schedule**. The proposed schedule will be presented to the ALJ at the beginning of the hearing. Prior to commencing the hearing, the ALJ and the parties will discuss the proposed witness schedule and address scheduling issues for individual witnesses, before the schedule is finalized. The ALJ has discretion to limit the number of witnesses and the length of their testimony.

5. Scope of Witness Examination. After the first direct and cross-examinations, each party will be permitted to question the witness on matters raised in the immediately preceding examination. Parties shall be required to establish their cases in chief (conducting both direct and cross) so that each witness only appears once.

6. Telephonic Testimony. A party must ask in advance if it intends to present a witness via telephone; if granted, the party shall provide the proposed witness with a complete set of exhibit binders from all parties, 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. Neither party currently requests telephonic testimony for any proposed witness.

7. Electronic Recording of Hearing.

a. Audio Recording. At present, Antioch requested to record the hearing. The request was granted with the following conditions: 1) that OAH's recording is the only official recording; 2) that the recorder will be turned on and off at the same time as the ALJ's recording, to avoid recording conversations while off the record; 3) that the operation of the party's recording mechanism will not be allowed to delay the hearing; and 4) that the recording will not be shared with any individuals outside of the hearing room during 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 motions are currently pending or anticipated. Any motion filed after the prehearing conference must be accompanied by a showing of good cause as to why the motion was not made prior to 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. Compensatory Education and Reimbursement. Any party seeking expense reimbursement shall present admissible evidence of these expenditures, or a stipulation to the amount, as part of its case in chief. Any party seeking compensatory education shall provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

11. Conduct 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. Student request a Spanish language interpreter for Parent. The request was granted. Neither party anticipates the need for any special accommodation for any witness or party. A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk at (916) 263-0880**,** the OAH ADA Coordinator at OAHADA@dgs.ca.gov or 916-263-0880 as soon as the need is made known. Additional information concerning a request for reasonable accommodation is available on OAH's website at http://www.dgs.ca.gov/oah/Home/Accommodations.aspx.

13. Hearing Closed To the Public. At Student's request the hearing will be closed 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 days or fewer than five days 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. IF A FULL AND FINAL SETTLEMENT IS REACHED AFTER 5:00 P.M. THE 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.

Dates for hearing will not be vacated until OAH receives a letter of withdrawal, or those portions of the signed agreement withdrawing the case, with signatures. 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 hearin

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

IT IS SO ORDERED.

DATE: April 24, 2015

/S/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings