BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. CAPISTRANO UNIFIED SCHOOL DISTRICT AND COMMUNITY ROOTS ACADEMY.	OAH Case No. 2016020288
CAPISTRANO UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 201610119 CERTIFICATION OF FACTS RE: CONTEMPT

Pursuant to California Government Code sections 11455.10—11455.20, and at the request of counsel for Capistrano Unified School District and Community Roots Academy (collectively, Districts), Administrative Law Judge Darrell Lepkowsky certifies the following facts concerning Dr. Perry Passaro's disobedience of and resistance to, a lawful subpoena duces tecum commanding his production of records at the first day of hearing in this administrative proceeding.

1. The administrative hearing in this matter came on regularly for hearing before ALJ Lepkowsky, Office of Administrative Hearings, in San Diego, California, starting on June 1, 2016, at Capistrano Unified's offices located at 33122 Valle Road, San Juan Capistrano, California, 92675.

2. Student's mother, appearing in pro per, represented him at the hearing.

3. Attorney Alefia Mithaiwalla, appeared on behalf of Districts.

4. On May 23, 2016, Districts personally served a subpoena duces tecum, along with a notice to consumer, on Dr. Perry Passaro. The subpoena was returnable on June 1, 2016, the first day of hearing, at the hearing location. The subpoena was accompanied by a

declaration of Districts' counsel laying out reasonable necessity for the production of the documents sought.

5. The subpoena sought the following items: Assessment data, protocols, notes, observation records, reports (other than Dr. Passaro's Spring 2016 independent educational evaluation), charts, and any and all other documents, including emails and other electronic documents, related to communications with [Student], his parents, and attorneys and any other documents related to [Student's] ability to access his curriculum and to function in the educational environment. Districts requested any documents relating to Student, generated between February 2014, and the present, which were prepared, referenced, reviewed, or considered in developing any opinions and/or recommendations presented to Districts regarding Student, other than records prepared by Districts.

6. At the beginning of the hearing on June 1, 2016, counsel for Districts informed the ALJ that Dr. Passaro had not complied with the subpoena.

7. Student's mother informed the ALJ that Dr. Passaro had told her he would produce the records if Student's mother signed a waiver for their release. Student's mother electronically sent the waiver to Dr. Passaro that morning.

8. On June 2, 2016, the second day of the hearing, counsel for Districts informed the ALJ that Dr. Passaro had produced some, but not all the records. Dr. Passaro did not respond to telephone calls from Student's mother again authorizing the release of all the documents requested in the subpoena duces tecum.

9. The ALJ reviewed the subpoena and noted that a notice to consumer had been properly served on Student's former attorney and that the subpoena and notice to consumer were properly served on Dr. Passaro.

10. Dr. Passaro did not file a motion to quash the subpoena.

11. Student did not file a motion to quash the subpoena. Student's mother orally indicated at hearing that she did not object to the production of the documents, and that she had signed a waiver allowing the release of all the records sought by Districts.

12. Districts filed a copy of the subpoena with OAH on June 3, 2016. On June 6, 2016, Districts filed a declaration with OAH, indicating that the subpoena was properly served on Dr. Passaro on May 23, 2016.

13. Dr. Passaro is scheduled to testify in this matter on June 21, 2016, on behalf of Student.

14. Government Code section 11455.10, subdivision (e) provides for grounds for a contempt sanction for, among other things, "failure or refusal, without substantial justification, to comply with a . . . subpoena . . . ." Cause exists to issue this certification of

facts based upon Dr. Perry Passaro's unjustified, and willful disregard of a duly executed and served administrative subpoena duces tecum commanding the production of documents at hearing that are in his possession and control and that are related to the anticipated subject matter of his testimony.

DATE: June 14, 2016

DocuSigned by:
Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings