BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. BALDWIN PARK UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016060925
BALDWIN PARK UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2016050319 ORDER FOLLOWING PREHEARING CONFERENCE

On September 19, 2016, a telephonic prehearing conference was held before Administrative Law Judge Clifford H. Woosley, Office of Administrative Hearings. Deborah Pepaj, Attorney at Law, appeared on behalf of Student. Kristin Myers, Attorney at Law, appeared on behalf of Baldwin Park 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 on **September 27, 28, and 29, 2016**, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. The first day of hearing shall commence at 9:30 a.m.; all remaining hearing days shall begin at 9:00 a.m. Unless otherwise ordered, the hearing shall take place at **Baldwin Park Unified School District, 3699 North Holly Avenue, Baldwin Park, CA 91706**.

Student's counsel indicated that she would not be available on September 29, 2016, and asked that the third day of hearing be held on Friday, September 30, 2016. District's counsel noted that the hearing dates were agreed upon by the parties and would oppose any continuance. The request for a scheduling change is denied, without prejudice. Counsel may raise their scheduling issues with the administrative law judge on the first day of hearing.

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 certified that the facilities used for this case comply with the law. The local educational agency shall inform OAH within two days of the date of this order if it is unable to comply with this order.

Prior to the beginning of the hearing, District shall assist the ALJ to ensure that the hearing room is configured into a courtroom setting, including (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. District shall also make reasonable effort to ensure that drinking water and tissue are available to all parties, witnesses and the ALJ.

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.

District's issue at the due process hearing is as follows:

(1) Did District's offer contained in the December 9, 2015 individualized education program meeting, as amended by the March 14, 2016 IEP and clarified in the April 27, 2016 prior written notice, provide Student with a free appropriate public education in the least restrictive environment?

District's proposed resolutions are:

(1) An order finding that the offer contained in the December 9, 2015 IEP, as amended by the March 14, 2016 IEP and clarified in the April 27, 2016 prior written notice, provides Student with a FAPE in the least restrictive environment.

(2) An order authorizing District to implement the December 9, 2015 IEP, as amended by the March 14, 2016 IEP and clarified in the April 27, 2016 prior written notice, if Parents want to have Student receive special education services from District.

Student's issues at the due process hearing are as follows:

(1) Did District deny Student a free FAPE by failing to offer placement in the least restrictive environment pursuant to his December 15, 2014 annual IEP?

(2) Did District deny Student a FAPE by failing to offer placement in the least restrictive environment pursuant to his March 16, 2015 IEP?

(3) Did District deny Student a FAPE by failing to offer placement in the least restrictive environment pursuant to his December 9, 2015 annual IEP?

(4) Did District deny Student a FAPE by failing to offer Student physical therapy services pursuant to his December 9, 2015 annual IEP?

Student's proposed resolutions are:

(1) A finding that Student's lease restrictive environment is full-time inclusion in a third grade general education classroom with no more than one hour per day pullout for one-on-one specialized academic instruction in reading.

(2) An order for District to contract with a nonpublic agency for an aide and an inclusion specialist.

(3) An IEP that includes scheduled collaboration time with the inclusion specialist and District staff.

(4) An order for District to obtain professional development training from an appropriate outside agency.

(5) An order that Student's teacher, resource specialist, and aide attend the Club 21 inclusion workshops.

(6) An order for 180 minutes per month of school-based physical therapy as part of Student's IEP related.

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 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 shall 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.

Each party shall provide current curriculum vitae for witnesses called to testify where the witnesses' education and experience are relevant to the witnesses' testimony, opinion, credibility and/or persuasiveness. These shall be properly numbered and placed in the parties' exhibit binders.

The parties are ordered to meet and confer by **September 23, 2016**, and reach agreement on a witness list for the first day of hearing. Further, the parties shall have a proposed witness schedule for the remainder of the hearing. Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for direct and cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. Additionally, 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 witness is expected to take. The District shall have witnesses available in case agreement on a witness list is not reached.

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.

5. Scope of Witness Examination. 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. The parties did not request permission for a witness to telephonically testify.

7. Electronic Recording of Hearing.

a. Audio Recording. Student'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 to avoid recording conversations while off the record; 3) that operation of the party's recording mechanism will not be allowed to delay the hearing; 4) and that the audio recording – or transcript thereof – shall not be played or shown to any witness in the hearing (other than the parties or their representative). District may similarly make an audio recording of 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. Order of Presentation of Evidence. 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].) District is first petitioning party. Accordingly, District shall present its case-in-chief, followed by Student. Student may then present his case-in-chief, as the second petitioning party.

9. 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 September 19, 2016.

10. 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.

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. Special Needs and Accommodations.

A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the mediation or 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/Accessibility.aspx.

Neither party requested accommodations because of an attendee's anticipated special needs.

14. Hearing Open To the Public. At the request of Student, the hearing will be open to the public.

15. 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.

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

IT IS SO ORDERED.

DATE: September 19, 2016

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CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings