BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. HUNTINGTON BEACH UNION HIGH SCHOOL DISTRICT,	OAH Case No. 2014090268
HUNTINGTON BEACH UNION HIGH SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2014090535 ORDER FOLLOWING PREHEARING CONFERENCE

On May 18, 2015, a telephonic prehearing conference was held before Administrative Law Judge Susan Ruff, Office of Administrative Hearings. Rosa Hirji, Attorney at Law, appeared on behalf of Student and Student's parents. Karen Van Dijk, Attorney at Law, appeared on behalf of the Huntington Beach Union High School District. 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 May 26, 27, and 28, 2015, and June 2, 3, and 4, 2015, and shall continue day to day thereafter, Monday through Thursday, as needed at the discretion of the ALJ. The hearing shall begin at 1:30 p.m. on May 26, 2015, and at 9:00 a.m. on all other days, unless otherwise ordered.

The hearing shall take place at the West Orange County Consortium for Special Education offices located at:

5832 Bolsa Avenue
Huntington Beach, CA 92649

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.

The school district shall provide a facility for the hearing that 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.

2. Issues and Proposed Resolutions. The issues at the due process hearing are listed below.

Student's issues:

a) Did District deny Student a free appropriate public education between August 2013, and May 13, 2014, by failing to identify, locate and evaluate Student as a child with a disability?

b) Did District's May 13, 2014 individualized education program offer deny Student a FAPE because it failed to offer services to address Student's mental health needs, goals designed to address Student's academic and mental health needs, and supports and services to enable Student to make progress?

c) Did District's September 22, 2014 IEP offer deny Student a FAPE because it failed to offer services to address Student's mental health needs, goals designed to address Student's academic and mental health needs, and supports and services to enable Student to make progress?

d) Did District's December 8, 2014 IEP offer deny Student a FAPE because it failed to offer intensive individual instruction, services to address Student's emotional disturbance, goals designed to address Student's mental health needs, and supports and services to enable Student to make progress?

District's Issue:

e) Did District conduct Student's initial evaluation in spring of 2014 in accordance with the legal requirements so that Student is not entitled to an independent educational evaluation?

Proposed Resolutions:

Student requests an order that District 1) reimburse Student's parents for their costs in funding Student's placement at Fusion Academy; 2) reimburse Student's parents for costs for funding Dr. Passaro's assessment; 3) reimburse Student's parents for costs for funding psychological counseling by Dr. Depompo; and 4) provide compensatory education through reimbursement for Fusion Academy.

District requests a finding that its assessment was appropriate and that Student is not entitled to an independent assessment at public expense.

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 consecutively paginated, for example by Bates-stamping. Each exhibit binder shall contain a detailed table of contents. 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.

4. Witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses. 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.

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.

7. Order of Presentation of Evidence. This matter is consolidated, and involves two parties. The order of presentation of evidence shall be as follows: Student shall present Student's case-in-chief first and then District will present its case. If a witness is to be called to testify by more than one party, each party will ask all its questions of the witness during the witness' first appearance to prevent the need to call the witness to testify a second time.

8. Motions. In Student's PHC Statement, Student made a request to be permitted to audio record the hearing. The motion is granted on following conditions: 1) the recording by OAH shall be official record of the hearing; 2) District's counsel shall also be permitted to record the hearing with the same restrictions set forth herein; 3) the audio recording(s) shall remain confidential, shall be used only by the attorneys representing the parties, and shall not

be disseminated to any other individual; 4) no portion of the audio recording shall be played to any potential witness in the case without consent from the ALJ hearing the case; 5) the recording equipment shall only be running when the hearing is "on the record" and the recording equipment shall be turned off during recesses, lunch and at any other time when the case is off the record; 6) the hearing will not be stopped or delayed at any time to accommodate the recordings or any problems with the recording equipment; 7) there shall be no video recording or photography of any type in the hearing room; and 8) no one besides the attorneys representing the parties will be permitted to make the recording without the permission of the ALJ hearing the case.

On the morning of the PHC, Student filed a motion to quash subpoenas duces tecum. District has until close of business on Wednesday, May 20, 2015, to file and serve a response to that motion. Student has until 10:00 a.m. on Friday, May 22, 2015, to file and serve a reply.

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. 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.

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.

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 the request of the parent, the hearing will be closed to the public.

14. 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.

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

IT IS SO ORDERED.

DATE: May 18, 2015

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings