BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013010475
v.	PREHEARING CONFERENCE ORDER
COMPTON UNIFIED SCHOOL DISTRICT AND LOS ANGELES COUNTY OFFICE OF EDUCATION.	

On April 24, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Elsa H. Jones, Office of Administrative Hearings (OAH). Pamela Daves, Attorney at Law, of Adams Esq. appeared on behalf of Student and Parent (Student). Daniel Gonzalez, Attorney at Law, of Littler Mendelson, appeared on behalf of the Compton Unified School District (District). Courtney M. Brady, Deputy General Counsel, appeared on behalf of the Los Angeles County Office of Education (LACOE). The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on May 7, 2013, through May 9, 2013, and continuing day to day, Monday through Thursday as needed, at the discretion of the ALJ. The hearing shall begin each day at 9:30 a.m., unless otherwise ordered.

The hearing shall take place at the District's offices located at 2300 Caldwell Avenue, L-Annex, Rm. L-18, Compton, California 90220.

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 has not been properly notified of the hearing date or properly subpoenaed, as applicable.

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

A. Whether District and LACOE denied Student a FAPE by:

1. Failing to assess Student in all areas of suspected disability from January 2011 to

the present, by failing to perform behavior, speech and language (LAS), occupational therapy (OT), and transition and vocational assessments; and

2. Failing to conduct appropriate psychoeducational and adapted physical education (APE) assessments from January 2011 to the present.

B. Whether the IEP of May 27, 2010, was defective so as to deprive Student of a FAPE because:

1. The IEP did not offer: (a) a specific placement; (b) sufficient LAS services; (c) a structured social skills program; (d) behavior services, including a behavior support plan (BSP) or a behavior intervention plan (BIP);

2. The IEP failed to include: (a) appropriate statements of present levels of performance; (b) appropriate measurable goals; (c) a statement of supplementary aids and services to be provided; (d) a statement of necessary and appropriate accommodations; (e) the projected date for beginning services; (f) and a statement of the anticipated frequency, location, and duration of services, including OT services and the services of Student's one-to-one aide; and

3. The LAS therapist, occupational therapist, and Student's aide did not attend the IEP meeting.

C. Whether the IEP of May 25, 2011, was defective so as to deprive Student of a FAPE because:

1. The IEP did not offer: (a) a specific placement; (b) sufficient LAS services; (c) a structured social skills program; and (d) behavior services, including a BSP or a BIP;

2. The IEP failed to include: (a) appropriate statements of Student's present levels of performance; (b) appropriate measureable goals; (c) a statement of the supplementary aids and services to be provided; (d) an explanation of the extent to which Student would not participate at school with nondisabled children; (e) a statement of necessary and appropriate accommodations; (f) the location at which all services would be rendered; (g) and the anticipated frequency, location, and duration of OT services; and

3. The LAS therapist, occupational therapist, and Student's aide did not attend the IEP meeting.

D. Whether the IEP of May 29, 2012, was defective so as to deprive Student of a FAPE because:

1. The IEP did not offer: (a) a specific placement; (b) an appropriate placement; (c) sufficient LAS services; (d) a structured social skills program; (e) behavior services, including a BSP or a BIP; and (f) a one-to-one aide;

2. The IEP failed to include: (a) appropriate statements of Student's present levels of performance; (b) appropriate measureable goals; (c) a statement of the supplementary aids and services to be provided; (d) an explanation of the extent to which Student would not participate at school with nondisabled children; (e) a statement of necessary and appropriate accommodations; (f) the location at which all services would be rendered; (g) the amount and frequency of OT services; and (h) an appropriate transition plan; and

3. The occupational therapist and Student's aide did not attend the IEP meeting.

E. Whether the District and LACOE failed to implement the Student's IEP's from January 2011 to the present in the following respects, so as to deprive Student of a FAPE:

1. Failing to provide the OT services and LAS services offered in the IEP's of May 27, 2010, May 25, 2011, and May 29, 2012;

2. Failing to convene additional IEP's as provided for in Student's May 25, 2011, and May 29, 2012, IEP's; and

3. Failing to implement Student's May 29, 2012, IEP from the start of the school year through the end of September 2012.

F. Whether the District and LACOE predetermined Student's placement in September 2012, so as to deprive Student of a FAPE.

G. Whether the District and LACOE failed to timely provide Student all of Student's educational documents, as requested, such that the two-year statute of limitations is tolled.

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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," "D,"or "L," in front of the exhibit to designate whether it is a Student, District, or LACOE exhibit (for example: S-5, or D-1, or L-2.) It is preferred that each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be consecutively numbered by Bates-stamp or other similar means, starting with the first page of the first exhibit and ending with the last page of the last exhibit. Each exhibit binder shall contain a detailed table of contents. The parties shall served 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 version will be used.

Unless used solely for rebuttal or impeachment, any exhibit not included in a party's exhibit list and not previously exchanged shall not be admitted into evidence at the hearing at the request of that party, except for good cause shown, and at the discretion of the ALJ, and unless the ALJ rules that it is otherwise admissible evidence.

4. Production of school records. Prior to the beginning of the hearing, the District and LACOE shall provide Student copies of all school records of Student that Student has requested, as required by Education Code section 56504.

5. Witnesses. The parties shall serve their final witness lists on each other and file them with OAH in compliance with Education Code section 56505, subdivision (e)(7). Each party is responsible for procuring the attendance at hearing of its own witnesses. The District and LACOE shall make witnesses under their respective control reasonably available, and the Student shall notify the District and LACOE by no later than noon on May 3, 2013, of the names of the employee witnesses Student wants produced, and the approximate time at which Student prefers such witnesses be produced. 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 final witness list, except for good cause shown, and at the discretion of the ALJ.

The parties shall attempt to reach agreement on a witness list for the first day of hearing. During the hearing, the parties shall keep the ALJ and each other apprised of the witness schedule. 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.

The ALJ has discretion to limit the number of witnesses and set the length of time allowed for testimony. The parties are encouraged to review and curtail 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. Parties should anticipate that witnesses who are listed on both parties' witness lists will only be permitted to be called to testify once.

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, at the discretion of the ALJ.

7. 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 time that the witness is scheduled to testify, 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. The witness shall testify via a land-line, and shall testify while alone in a quiet room. No witness will be permitted to testify by telephone unless all of these requirements have been fulfilled.

8. Motions. Student's motion for a change of venue of the hearing is denied without prejudice. Any motion filed after the issuance of this PHC Order 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 PHC of April 24, 2013.

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

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 placed on the "vibrate" setting during the hearing unless permission to the contrary is obtained from the ALJ. There shall be no texting or tweeting while the hearing is in session 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, or for language interpretation services.

13. Settlement. The parties are encouraged to continue working together to reach a settlement 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 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.

14. Failure to comply with this Order and with the provisions of Education Code section 56505, subdivision (e)(7) may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

Dated: May 2, 2013

/s/

ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings