BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. SANTA CLARA UNIFIED SCHOOL DISTRICT,	OAH Case No. 2015030117
SANTA CLARA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2014120222 ORDER FOLLOWING PREHEARING CONFERENCE

On June 1, 2015, a telephonic prehearing conference was held before Administrative Law Judge Theresa Ravandi, Office of Administrative Hearings. Roberta S. Savage, Attorney at Law, appeared on behalf of Parent and Student. Kirsten Y. Zittlau, Attorney at Law, appeared on behalf of Santa Clara Unified School District. 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 at Santa Clara's District office located at 1889 Lawrence Road, Santa Clara, California, 95051, on June 9, 2015, at 9:30 a.m., June 10-11, 2015, at 9:00 a.m., June 15, 2015, at 1:30 p.m., and June 16, 2015, at 9:00 a.m., and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing will resume on July 9, 2015, at 9:30 a.m. for the testimony of Ms. Wells-Walberg, Ms. Wilkerson, and rebuttal witnesses, and continue day to day, Tuesday[1] through Thursday as needed at the discretion of the ALJ.[2]

[1] If additional hearing time is required, the hearing will continue on Tuesday, July 14, 2015, at 9:30 a.m.

[2] At a minimum, the hearing room shall have four or more separate tables capable of being moved into a courtroom configuration with an electrical outlet near the ALJ's table. Santa Clara shall ensure that all parties, witnesses, and the ALJ have drinking water available to them.

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. The issues in a due process hearing are limited to those identified in the written due process complaint. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) The issues were discussed and clarified during the PHC and are listed below.[3]

Student's Issues:

Issue One: Did Santa Clara deny Student a free appropriate public education for the 2014-2015 school year, until the March 19, 2015 individualized education program team meeting, by preventing Parents from meaningfully participating in the decision making process by failing to accept Student's assignment of educational rights?

Issue Two: Did Santa Clara fail to offer or provide Student a free appropriate public education for the 2014-2015 school year through its IEP offers dated April 1, 2014, May 20, 2014, June 5, 2014, and August 14, 2014, by:

a. failing to develop appropriate annual goals in all areas of need, specifically:

i. motivation;
ii. self-regulation;
iii. basic vocational skills;
iv. social language;
v. social skills;
vi. functional academics;
vii. critical thinking; and
viii. safety;

b. failing to develop an appropriate individual transition plan; and

c. failing to offer an appropriate program, including placement and services, which was reasonably calculated to provide meaningful benefit?

Issue Three: Did Santa Clara fail to offer or provide Student a FAPE based upon the March 19, 2015 IEP for the 2014-2015 school year, extended 2015 school years, and the 2015-2016 school year by committing the following procedural violations:

a. failing to accept Student's assignment of educational rights:

[3] The parties may further discuss the framing of the issues at the start of the hearing.

b. predetermining its offer; and

c. failing to consider Student's input, including the input of her consultant?

Issue Four: Did Santa Clara fail to offer or provide Student a FAPE based upon the March 19, 2015 IEP for the 2014-2015 school year, extended 2015 school years, and the 2015-2016 school year by:

a. failing to develop appropriate annual goals in all areas of need, specifically:

i. motivation;
ii. self-regulation;
iii. basic vocational skills;
iv. social language;
v. social skills;
vi. functional academics;
vii. critical thinking; and
viii. safety;

b. failing to develop an appropriate individual transition plan; and

c. failing to offer an appropriate program, including placement and services, which was reasonably calculated to confer meaningful educational benefit?

Proposed Resolutions: Student requests an order that Santa Clara denied her a FAPE for the 2014-2015 school year including extended school year, through the expiration of the March 2015 IEP. Student seeks reimbursement for all educational services provided since the beginning of the 2014-2015 school year. Student requests an IEP that includes 1) one-to-one support; 2) autism/behavior consultation services; 3) speech and language services; 4) educational therapy; 5) a comprehensive set of goals developed by her current providers; and 6) a comprehensive individual transition plan as developed by Student and Ms. Wilkerson and provided to the district prior to the March 19, 2015 IEP team meeting. Student further seeks an order that Santa Clara must provide its staff training in Person Centered Planning.

Santa Clara's Issue:

Issue Five: Does Santa Clara's IEP offer, memorialized in its August 14, 2014 IEP and November 14, 2014 prior written notice, offer Student a FAPE in the least restrictive environment?

Proposed Resolution: Santa Clara seeks an order that its August 2014 IEP and November 2014 prior written notice offer Student a FAPE in the least restrictive environment.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. Student has used a letter system to identify her exhibits, and Santa Clara has used a number system. 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 represent that they are in the process of serving their evidence binders on each other in compliance with Education Code section 56505, subdivision (e)(7), which requires that the parties exchange their evidence at least five business days prior to hearing. 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. Parties are requested to exchange and provide resumes for all professional witnesses.

Student disclosed that her evidence binder additionally includes past educational records from 2008 and 2010, as well as some articles. Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not timely disclosed and exchanged shall not be admitted into evidence at the hearing unless 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 timely disclosed except for good cause shown and at the discretion of the ALJ.

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. Student identified 24 witnesses. Santa Clara identified 14 witnesses including its most recently identified witness, Melissa Mitchell. Twelve of Santa Clara's witnesses are shared witnesses, for a total of 26 witnesses. The parties are ordered to meet and confer by June 3, 2015, as to the schedule of witnesses and projected length of direct and cross examination.

At the start of the hearing, the parties shall present a final, joint schedule of witnesses with time estimates. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony, to ensure that this matter is concluded within the time allotted, based upon the parties' time estimates and the issue presented.

5. Order of Presentation of Evidence and Scope of Witness Examination. Each party bears the burden of proof with respect to their issues. Student's request that Santa Clara present its witnesses first was denied, as Student's case has been designated the lead case. Student shall present her evidence first, subject to the right to call two previously identified witnesses out of order on the final day of hearing. Santa Clara will present its evidence following Student. Where Student and Santa Clara intend to call the same person

to testify, each party will examine the witness immediately after the other party, so the witness will only need to be called to the witness stand once. 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. 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.

Student's request to allow Nancy Rahimi to testify telephonically in the event she is unable to personally appear during the first week of hearing was unopposed and is granted. Santa Clara's motion to allow Magaly Ramos-Cartegena to testify telephonically and/or via video conferencing was unopposed and is granted. The parties shall ensure that they provide each telephonic witness with a complete exhibit binder from each party, containing all of each party's exhibits, prior to the hearing. Santa Clara shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness.

7. Electronic Recording of Hearing. Both parties intend to make an audio recording of the hearing. The following conditions apply to any recording: 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; and 3) the operation of the party's recording mechanism will not be allowed to delay the hearing. Failure to comply with these conditions may result in a revocation of this order which grants the parties permission to make an audio recording of the hearing. No party is allowed to video tape the proceedings.

8. Motions. On May 27, 2015, Student filed a Request for Reasonable Accommodation. The Presiding Judge has issued a separate order as to Student's request. Student indicated she may need to file a motion to change the order of presentation of evidence in the event she is unable to secure the presence of her witnesses for the first week of hearing. Any further motions 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 June 1, 2015.

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 and 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. 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, or 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.

After receiving OAH's order regarding Student's request for accommodation, if Student has alternate requests for accommodation, she is to directly contact the ADA Coordinator.

At present neither party anticipates the need for additional special accommodation for any witness or party, or for interpreter services.

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 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.

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

IT IS SO ORDERED.

DATE: June 2, 2015

/s/
THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings