BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. DEL MAR UNION SCHOOL DISTRICT,	OAH Case No. 2018020023
DEL MAR UNION SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2018070786 ORDER FOLLOWING PREHEARING CONFERENCE

On August 13, 2018, a telephonic prehearing conference was held before Administrative Law Judge Paul H. Kamoroff, Office of Administrative Hearings. Corrin M. Johnson and Matthew H. Storey, Attorneys at Law, appeared on behalf of Parent and Student. Summer D. Delessandro and Sarah E. Orloff, Attorneys at Law, appeared on behalf of Del Mar Union 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 August 28, 29, and 30, and September 4, 5, and 6, 2018, and continuing day to day, Monday through Thursday, at the discretion of the ALJ. During the prehearing conference, Del Mar stated that its District office was no longer available for the due process hearing. As such**, the hearing shall take place at OAH's regional office located at 1350 Front Street, Suite 3005, San Diego, CA 92101**. The hearing shall begin at 9:30 a.m. the first day of the hearing, at 1:30 p.m. on September 4, 2018, and at 9:00 a.m. on all other days, unless otherwise ordered.

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

Student's Issues:

1. Did Del Mar deny Student a free appropriate public education during the 2015-2016 and 2016-2017 school years, beginning January 31, 2016, by failing to

convene individualized education program team meetings, as warranted by Student's lack of progress and escalating behaviors?

2. Did Del Mar deny Student a FAPE during the 2016-2017 school year, by failing to (a) timely inform Parents of behavioral emergency reports; (b) provide Parents behavioral emergency reports; and (c) convene an IEP team meeting regarding Student's behaviors and Del Mar's use of restraints.

3. Did Del Mar deny Student a FAPE, beginning January 31, 2016, during the 2015-2016, 2016-2017, and 2017-2018, school years, by failing to timely and appropriately assess Student in all areas of suspected deficit, including academics, psychoeducational, cognitive, social-emotional, behavior, occupational therapy, and speech and language?

4. Did Del Mar deny Student a FAPE in the IEPs dated October 21, 2016, June 9, 2017, and May 8, 2018, by failing to provide appropriate (a) placement; (b) services; (c) supports; and (d) accommodations, to meet his therapeutic and behavior needs?

5. Did Del Mar deny Student a FAPE by failing to place Student at a residential treatment center on June 9, 2017?

6. Did Del Mar deny Student a FAPE by failing to place Student at a residential treatment center on May 15, 2018?

Del Mar's Issue:

7. Did Del Mar's IEP offer of May 8, 2018 IEP, as modified on May 15, 2018, offer Student a FAPE in the least restrictive environment?

To remedy his issues, Student requests placement at a residential treatment center, appropriate services and supports; and reimbursement for educational expenses and related travel costs. Del Mar requests an order permitting it to implement the May 2018 IEP, absent parental consent.

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 may 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.

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.

The parties are ordered to meet and confer by 5:00 p.m. on August 15, 2018, regarding the scheduling of witnesses. The parties shall attempt to reach agreement on a witness list for the first day of hearing. Del Mar shall have witnesses available in case agreement on a witness list is not reached. 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 such witness is expected to take.

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.

Student's motion to allow witnesses who reside out of state, including Bernie Zimmerman, Katie Brown, Josh Gunalda, Elizabeth Lucarelli, Linda Zimmerman, Kurt Wulfekuhler, Matthew McQueen, Jenna Barnes, Molly Quinn, and James Brookins, to testify telephonically is granted. Student shall provide each witness who appears by telephone with a complete exhibit binder from each party, 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.

7. Electronic Recording of Hearing.

a. Audio Recording. The parties' joint motion to make an audio recording of the hearing is granted, subject to the following conditions: 1) OAH's recording is the only official recording; 2) 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) operation of the party's recording mechanism will not be allowed to delay the hearing; and 4) the recording shall not be shared with any non-party representative, possible witness, or social media.

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].) Here, the matter is consolidated. Student shall present his case-in-chief, followed by Del Mar.

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 three days prior to the prehearing conference.

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. At present, neither party has requested any special needs or 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 https://www.dgs.ca.gov/oah/Home/Accessibility.aspx.

14. Hearing Closed To the Public. The hearing will be closed to the public unless Student requests it be open.

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 EMAIL THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT https://www.applications.dgsapps.dgs.ca.gov/oah/oahsftweb .

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: August 14, 2018

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Paul Kamoroff
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PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings