BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. RIVERSIDE UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2015010862
RIVERSIDE UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2014100962 PREHEARING CONFERENCE ORDER

On May 1, 2015, a telephonic prehearing conference was held before Administrative Law Judge Elsa H. Jones Office of Administrative Hearings. Richard Isaacs, Attorney at Law, appeared on behalf of Student, Andrew Lopez. Jack B. Clarke, Jr. and Dorothy McLaughlin, Attorneys at Law, appeared on behalf of Riverside 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 on May 5, 6, 7, and 13, 2015, and continuing day to day, Monday through Thursday as needed, at the discretion of the ALJ. The first day of hearing shall begin at 9:30: a.m.

The parties have agreed that the hearing shall take place at the Riverside Adult School, located at 6735 Magnolia Avenue, Riverside, California 92506. 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 people with disabilities.

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 was not 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. Student's Issues

1. Whether District denied Student a free appropriate public education from January 2013 to the end of the 2013-2014 school year, by: (a) failing to create appropriate and measurable goals and objectives in the area of speech and language; (b) failing to offer appropriate speech and language services, (c) failing to offer an appropriate placement; and (d) failing to have high expectations for progress;

2. Whether District denied Student a FAPE during the 2014/2015 school year by: (a) failing to create appropriate and measurable goals and objectives in the area of speech and language; (b) failing to offer appropriate speech and language services; (c) failing to offer an appropriate placement; and (d) failing to have high expectations for progress;

3. Whether District provided a legally sufficient response to Student's request for an independent psychoeducational evaluation, in that District failed, without undue delay, either to agree to fund the assessment, or file for a due process hearing to defend District's psychoeducational assessment.

B. District's Issues

1. Whether District's psychoeducational assessment was appropriate such that Student is not entitled to an independent psychoeducational assessment by Dr. Chris Davidson at public expense; and

2. Whether Student is entitled to an independent psychoeducational assessment by Dr. Chris Davidson at public expense when Dr. Davidson has not complied with applicable federal and state laws.

During the PHC, Student moved to withdraw issues 3, 4, and 5 alleged in his Complaint, without prejudice. District opposed the motion. The ALJ heard argument on the motion, and the motion is granted. Issues 3, 4, and 5 of the Complaint are withdrawn, without prejudice.

3. Exhibits. The parties represent that they have 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.

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. The parties represented that they had served their final witness lists upon each other in compliance with Evidence Code section 56505, subdivision (e)(7). Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available, upon timely notice. 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 be prepared at the commencement of the first day of hearing to present a schedule of witnesses 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 all times during the hearing to discuss the witnesses to be presented, the order in which they will be called, and the amount of time the testimony of each witness is expected to take. The parties shall coordinate the availability and order of witnesses to ensure that there is a witness available to testify at all times during the hearing, and to ensure that the hearing is completed as scheduled.

The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony. 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 should anticipate that, except for purposes of rebuttal or impeachment, witnesses who are listed on the witness lists of both parties will only be permitted to be called to testify once.

Except for parties, and individuals who are serving as representatives of parties for purposes of appearance at hearing, no witnesses will be allowed in the hearing room during the proceedings except when that witness has been called to testify.

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, at the discretion of the ALJ.

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). Student moved to present the testimony of Judy Segal by telephone. District opposed the motion. Upon hearing argument, the motion was granted at the PHC. Student shall provide Ms. Segal with a complete set of exhibit binders from all parties, containing all of eachparty's exhibits, prior to her 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. Ms. Segal will testify from a landline telephone while alone in a private room.

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 his case first.

8. Motions. Student moved to audiotape the hearing. The ruling on the motion is deferred for determination by the hearing ALJ. District filed a motion in limine seeking to exclude (1) evidence regarding matters that occurred more than two years prior to the date on which Student filed his Complaint, and (2) any reference to the motor-speech evaluation that was conducted by Judy Segal on or about April 28, 2015. The motion to exclude evidence regarding matters that occurred more than two years prior to the filing date of Student's Complaint is denied without prejudice. District may object to any such evidence at the time it is offered at hearing, and the hearing ALJ will rule on the objections as they are presented. The motion to exclude references to Judy Segal's April 2015 assessment is deferred to the hearing ALJ.

At the PHC, District requested to have two District representatives, Timothy Walker. Director of Special Education, and Cyndi Hartshorn, District Program Specialist, present at hearing. Both individuals are listed as witnesses for both parties. Student opposed the request. A ruling on this request is deferred to the hearing ALJ.

No additional motions are pending or contemplated. Any motion filed after the date of this 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 May 1, 2015.

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 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, or for interpreter or translation services. A party or participant in this case, such as a witness, who requires reasonable accommodations to participate in the hearing may contact the assigned OAH calendar clerk at (916) 263-0880, or the OAH ADA Coordinator at OAHADA@dgs.ca.gov or at (916)-263-0880, as soon as the need becomes known. Additional information concerning a request for reasonable accommodations is available on OAH's website at http://www.dgs.ca.gov/oah/Home/Accommodations.aspx.

13. Hearing Open to the Public. At the request of Student, the hearing will be open to the public. At present, the parties do not anticipate that any media will be present at the hearing. OAH shall be notified immediately if media are expected to be present at the hearing.

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 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 and with Education Code section 56505, subdivision (e)(7) may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: May 4, 2015

/s/

ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings