BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. ANTIOCH UNIFIED SCHOOL DISTRICT,	OAH Case No. 2014120518
ANTIOCH UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2015020258 ORDER FOLLOWING PREHEARING CONFERENCE

On April 13, 2015, a telephonic prehearing conference (PHC) was held before Administrative Law Judge B. Andrea Miles, Office of Administrative Hearings . Attorney Brett Allen appeared on behalf of Student.[1] Attorney David Mishook appeared on behalf of Antioch Unified 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 at Antioch's district offices located at 510 G Street, Antioch, California, 94509, on April 21, 22, 23, 27, and 28, 2015, and continue day to day, Monday through Thursday, as needed at the discretion of the ALJ.[2] The hearing shall start at 9:30 a.m. on April 21, 2015, 9:00 a.m. on April 22, 2015, April 23, 2015, and April 28, 2015, and 1:30 p.m. on April 27, 2015. Antioch 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

[1] Attorney Laura Behghal listened to the PHC.

[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. Antioch shall ensure that all parties, witnesses, and the ALJ have drinking water available to them.

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 for the due process hearing were discussed and clarified during the PHC. The issues are listed below.

Issue I: During the 2013-2014 school year, beginning February 1, 2014, did Antioch deny Student a free appropriate public education by:

a. failing to offer a one-to-one aide to assist Student with academics, behavior, and/or personal safety issues;[3]

b. failing to offer an adequate bullying response plan;

c. failing to offer adequate school-based counseling;

d. failing to offer private counseling;

e. failing to offer one-to-one tutoring; and/or

f. failing to offer an appropriate placement because Antioch should have offered Student Home-Hospital Instruction, home instruction in an alternative setting, an alternative public placement, or a Non-Public School?

Issue II: During the 2014-2015 school year, did Antioch deny Student a FAPE by:

a. failing to offer a one-to-one aide to assist Student with academics, behavior, and/or personal safety issues;

b. failing to offer an adequate bullying response plan;

c. failing to offer adequate school-based counseling;

d. Failing to offer private counseling;

e. Failing to offer one-to-one tutoring;

f. failing to offer an appropriate placement because Antioch should have offered Student home-hospital instruction, home instruction in an alternative setting, an alternative public placement, or a non-public school?

[3] Antioch objected the wording of section "a" of Issues I and II on the grounds that Student had not specified in his complaint the type of one-to-one aide or duties of the one-to-one aide. The ALJ overruled that objection, finding that the body of the complaint provided sufficient information to put Antioch on notice of the specific areas.

Issue III: During the 2013-2014 school year, beginning February 1, 2014, did Student experience bullying such that he was denied a FAPE because Antioch:

a. failed to evaluate the impact of bullying on Student's educational participation and performance;

b. failed to convene an individualized education program team meeting to discuss the impact of the bullying on Student's educational participation and performance;

c. failed to provide a safe and appropriate learning environment; and

d. failed to provide appropriate supports and services to address the bullying?

Issue IV: During the 2014-2015 school year, did Student experience bullying such that he was denied a FAPE because Antioch:

a. Failed to evaluate the impact of bullying on Student's education participation and performance;

b. Failed to convene an IEP team meeting to discuss the impact of the bullying on Student's education participation and performance;

c. Failed to provide a safe and appropriate learning environment; and/or

d. Failed to provide appropriate supports and services to address the bullying?

Issue V: During the 2013-2014 school-year, beginning February1, 2014, did Antioch procedurally deny Student a FAPE by failing to provide Parents with documents in Spanish and by failing to provide translators for Parents, which resulted in a denial of Parents' right to meaningfully participate in the IEP development process?

Issue VI: During the 2014-2015 school year, did Antioch procedurally deny Student a FAPE by failing to provide Parents with documents in Spanish and by failing to provide translators for Parents, which resulted in a denial of Parents' right to meaningfully participate in the IEP development process?

Issue VII: Did the following, which were offered by Antioch to Student, constitute a FAPE, in the least restrictive environment:

a. May 14, 2014 IEP;

b. August 6, 2014 Prior Written Notice;

c. October 1, 2014 IEP;

d. November 12, 2014 IEP; and

e. December 15, 2014 IEP?

Student's Proposed Resolution I: Antioch shall immediately place Student in a safe and appropriate learning environment in a non-public school, such as Bayhill High School in Oakland, California.

Student's Proposed Resolution II: Antioch shall provide Student with compensatory education in all areas of educational needs, including:

a. intensive remedial one-to-one instruction based on a current assessment from a qualified educational therapist;

b. intensive remedial speech and language therapy based on a current assessment from a qualified speech and language therapist;

c. intensive remedial assistive technology instruction based on a current assessment from a qualified assistive technology therapist;

d. school-based counseling; and

e. private counseling.

Student's Proposed Resolution III: Antioch shall pay for Dr. Carina Grandison's independent assessment of Student because Antioch failed to assess Student in all areas of educational need in a timely and appropriate manner.

District's Proposed Resolution: OAH will issue an order finding that Antioch's offers of placement and services, as set forth in the May 14, 2014 IEP, the August 6, 2014 Prior Written Notice, the October 1, 2014 IEP, the November 12, 2014 IEP, and the December 15, 2014 IEP, are appropriate for Student and constitute 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. 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. The parties shall include only one document per each exhibit tab. 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 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.

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 or in rebuttal, 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 shall meet and confer 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 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 issues presented.

5. Order of Presentation of Evidence and Scope of Witness Examination: Student bears the burden of proof in the primary case and shall present his evidence first, followed by Antioch. When Student and Antioch intend to call the same person to testify, each party will examine the witness immediately after the other party, for purposes of both direct- and cross-examination, 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: Neither party requested to have witnesses appear by telephone. 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.

7. Electronic Recording of Hearing: At present, Student intends 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 permission to make an audio recording of the hearing.

8. 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 prior to or during the prehearing conference.

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 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. 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.

Student indicated that both of Student's parents require the assistance of a Spanish interpreter. OAH will provide a Spanish Interpreter for Parents at the hearing.

12. Hearing Closed To the Public: At the request of Student, the hearing will be closed to the public.

13. 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.

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

IT IS SO ORDERED.

DATE: April 16, 2015

/s/

B. ANDREA MILES
Administrative Law Judge
Office of Administrative Hearings