BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LIBERTY UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2017020873 ORDER FOLLOWING PREHEARING CONFERENCE

On May 5, 2017, a telephonic prehearing conference was held before Administrative Law Judge Rita Defilippis, Office of Administrative Hearings. Mandy Leigh, Attorney at Law, appeared on behalf of Student. Jan Tomsky, Attorney at Law, appeared on behalf of Liberty Union High 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 May 16, May 17, and May 18, 2017 and continuing day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at Liberty Union High School District offices located at 20 Oak Street, Brentwood, CA 94513. The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 a.m. all other days, unless otherwise ordered.

As ordered in the scheduling order, Liberty shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities. Liberty certified that the facilities used for this case comply with the law. Liberty shall inform OAH within two days of the date of this order if it is unable to comply with this order.

Prior to the beginning of the hearing, Liberty shall ensure that the hearing room is configured into a courtroom setting and shall have at a minimum (1) a table for Student and his representatives; (2) a table for Liberty's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. Liberty shall provide drinking water and tissue to all parties, witnesses and the ALJ. The same hearing room shall be used for each day of hearing and shall be available at least one hour prior to the commencement of the hearing each day. The hearing room shall be

locked following the hearing each night. Liberty shall ensure that the hearing room and access to it are in compliance with the Americans with Disabilities Act.

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[1] and Proposed Resolutions. The issues at the due process hearing, and the proposed resolutions, are listed below.

Issues

1. Did Liberty deny Student a free and appropriate public education (FAPE) during his 2016/2017 school because:

a. Liberty failed to timely hold a transitional IEP meeting, despite having reasonable notice of his eligibility and need for special education services, causing Student to begin the school year without any special education services: and

b. Liberty's offer of FAPE, presented in the April19, 2016 IEP, provided inadequate goals and services because:

1. Student's proposed spelling goal, in actuality furthered a written expression goal, needed to be broken down into sub-parts, and failed to provide appropriate baselines, thus rendering it immeasurable and unlikely to ensure Student meaningful academic progress in this area;

2. Student's proposed oral reading goal failed to provide appropriate and accurate baselines therefore rendering the goal inappropriate and immeasurable and unlikely to ensure Student meaningful academic progress in this area;

3. Liberty's proposed reading goal failed to provide appropriate and accurate baselines and was unclear therefore rendering the goal inappropriate and immeasurable and unlikely to ensure Student meaningful academic progress in this area; and

[1] Student's request for due process originally contained 3 issues. Student's issue #2 was a statement that Student was entitled to compensatory education from Liberty for after school tutoring in reading and writing. Student agreed to withdraw this issue as it is included in Student's proposed resolutions. Student's issue #3, alleged a violation of Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and relevant state and related civil rights statutes. As such, Issue #3 is not included herein because OAH lacks jurisdiction to hear such claims.

4. Liberty's instructional support class, namely tutorial support, was inadequate and prevented Student from receiving needed academic services?

Proposed Resolutions

1. Liberty shall provide compensatory education in the form of additional supports and related services because of its failure to provide Student with a FAPE during the relevant statutory periods that allowed his reading and writing skills to atrophy, including contracting with Dr. White, providing teacher training for the 2016-2017 and 2017-2018 school years to Student's teachers, structuring a multi-sensory program for Student to improve his reading and writing skills, overseeing this program and provide reports on Student's progress, and attending IEP meetings to discuss Student's progress. Alternatively, Liberty shall fund Student's placement in a non-public school for the 2016-2017 and 2017-2018 school year and the summer of 2018. If placed at a non-public school, the school should: develop an intense multi-sensory based reading and writing program for Student that is based on the Orton-Gillingham model, provide constant monitoring and reassessment of the program, provide training to staff regarding implementation of this program, and a reporting system for communication with Parents and staff.

2. Liberty shall provide occupational therapy services due to its past denials of this needed service during the relevant statutory period specifically to address the deficits noted in Dr. Sandoval's report in the areas that include but are not limited to writing.

3. Liberty shall reimburse Parents for Dr. White's reading and written language assessment of Student.

4. Liberty shall reimburse Parents for tutoring services from Kathy Clausen, as well as transportation reimbursement and any and all costs associated with this placement. Because of Liberty's refusal to provide Student appropriate specialized academic instruction, Liberty shall fund individualized and intensive academic services in reading and writing from Kathy Clausen to begin February, 2017. Student shall derive a benefit from this service, one that Liberty has refused to provide, and will allow Student to make progress in accessing his academic classes and his curriculum. As such, Student's Parents are entitled to reimbursement from Liberty for obtaining this service.

5. Liberty shall fund individualized and intensive specialized programs in reading and writing for Student during ESY of 2017 and ESY of 2018. Student requires these services based on his extreme deficits in reading and writing, based on assessments and past academic work.

6. Student requests to be determined the prevailing party on all issues.

7. Liberty shall reimburse Parents for all reasonable attorney's fees and costs to the extent provided by law.

8. Liberty shall provide all equitable remedies to which Student is entitled through this proceeding, including payment for educational services paid for by Parents as pled in the Due Process Complaint.

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 timely 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 in the party's prehearing conference statement except for good cause shown, and at the discretion of the ALJ. Student added an expert witness, Dr. Dan Peters, to her witness list. Liberty agreed to this addition. Student will list this witness in evidence timely exchanged 5 days before hearing.

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 attempt to reach agreement on a witness list for the first day of hearing. 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. Neither party requested that a witness appear by telephone at this time. 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.

7. Electronic Recording of Hearing.

a. Audio Recording. Student requested to audio record the hearing. Student's motion to make an audio recording of the hearing is granted, subject to the following conditions: 1) that OAH's recording is the only official recording; 2) that the recording will be turned on and off at the same time as the ALJ's recording, in order to avoid recording conversations while off the record; and 3) that operation of the party's recording mechanism will not be allowed to delay the hearing. If Liberty desires to make such a recording, Liberty shall move for leave to do so in advance of the hearing, and the same conditions shall apply.

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, Student is the petitioning party. Accordingly, Student shall present its case-in-chief, followed by Liberty.

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 prior to or during 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 anticipates the need for special accommodation for any witness or party or for the services of an interpreter.

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 Open/Closed To the Public. At the request of Student, the hearing will be open to the public.

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 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.

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

IT IS SO ORDERED.

DATE: May 05, 2017

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Rita Defilippis
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RITA DEFILIPPIS
Administrative Law Judge
Office of Administrative Hearings