BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. HUNTINGTON BEACH CITY SCHOOL DISTRICT,	OAH Case No. 2016010140
HUNTINGTON BEACH CITY SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2015110012 ORDER FOLLOWING PREHEARING CONFERENCE

On Monday, February 22, 2016, a telephonic prehearing conference was held before Administrative Law Judge Ted Mann, Office of Administrative Hearings. Phillip Van Allsburg, Attorney at Law, appeared on behalf of Student. Ernest Bell, Attorney at Law, appeared on behalf of Huntington Beach City 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 March 1-3, and 7-8, 2016, and continuing day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at the District's offices located at LeBard Elementary School, 20451 Craimer Lane, Huntington Beach, CA 92646. The hearing shall begin at 9:30 a.m. the first day of the hearing, 1:30 p.m, on Monday March 7, and at 9:00 a.m. all other days, unless otherwise ordered.

As ordered in the scheduling order, the named local educational agency 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. The named local educational agency has certified that the facilities used for this case comply with the law.

Prior to the beginning of the hearing, District 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 District's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. District 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. District 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 and Proposed Resolutions. The issues at the due process hearing, and the proposed resolutions, are listed below.

Student's Issues:

1) Whether District denied Student a free appropriate public education by failing to meet its child find obligations and identify Student as eligible for special education between January 5, 2014 and September 21, 2015;

2) Whether District denied Student a free appropriate public education by failing to identify her as eligible for special education in the categories of emotional disturbance and specific learning disability at the September 22, 2015 IEP; and

3) Whether District denied Student a free appropriate public education by failing in the September 22, 2015 IEP to provide her with an appropriate placement, goals, accommodations, and services by:

a) failing to provide her with placement at Fusion Academy;
b) failing to provide her with one-to-one instruction;
c) failing to provide her with adequate counseling services;
d) failing to provide her with adequate intervention services;
e) failing to provide her with goals related to her alleged eligibility for special education under the category of emotional disturbance; and
f) failing to provide her with goals related to her alleged eligibility for special education under the category of specific learning disability.

Student's Proposed Resolutions:

1) District shall provide reimbursement to Student for all out-of-pocket costs related to Student's private placement at Fusion Academy;

2) District shall fund Student's private placement at Fusion Academy;

3) District's September 22, 2015 IEP offer shall be found inappropriate.

4) District shall reimburse Student's parents for private educational and psychological services arranged by them between January 5, 2014 and September 21, 2015;

5) District shall be found to have failed in its child find obligations by failing to identify Student as eligible for special education between January 5, 2014 and September 21, 2015; and

6) District shall fund compensatory education services for Student through a non-public agency in an amount to be determined by proof at hearing.

District's Issues:

1) Whether District's offer of placement, program, and services in Student's September 22, 2015 individualized education program constituted an offer of FAPE in the least restrictive environment; and

2) Whether District's 2015 psychoeducational assessment of Student was appropriate and met the applicable federal and state requirements.

District's Proposed Resolutions:

1) District's September 22, 2015 IEP offer constituted a FAPE in the LRE;

2) District's 2015 psychoeducational assessment of Student was appropriate and met the requirements of federal and state law; and

3) District is not obligated to fund an independent psychoeducational evaluation of Student.

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 the close of business on Wednesday, February 24, 2016, as to the schedule of witnesses on an hour-by-hour basis, to coordinate the availability and order of testimony 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 parties are also ordered to meet and confer as to providing Student's documents in compact disc form to District's telephonic witness, if needed.

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.

District's motion to allow Nancy Serafano to testify telephonically, if needed, is granted. Student shall provide District with a complete set of Student's exhibits in electronic form (such as compact disc) containing all of Student's exhibits, and District, in turn, shall provide its own exhibits in electronic form, along with those of Student, to the witness, prior to the hearing, and shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness. District shall ensure the return of Student's records to Student at the close of the hearing. District shall promptly notify Student and OAH if the witness is available to testify in person at the hearing.

7. Electronic Recording of Hearing.

a. Audio Recording. 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. District may also make an audio recording of the hearing at its discretion, subject to the conditions related above.

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's case is the primary case. Accordingly, Student shall present its case-in-chief, followed by District's case-in-chief. In each instance, witnesses shall be examined as explained in paragraph 5, above.

9. Motions. No pretrial motions are pending or contemplated, other than District's motion for telephonic testimony by one witness, and Student's motion to audio record the hearing. 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 of February 22, 2016.

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. No special needs or accommodations for any participant in the hearing are contemplated by either party.

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: http://www.dgs.ca.gov/oah/Home/Accommodations.aspx

14. Hearing Closed To the Public. The hearing will be closed 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: February 24, 2016

DocuSigned by:
Ted Mann
E2B8AEC30B604EC...

TED MANN
Administrative Law Judge
Office of Administrative Hearings