BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT,	OAH Case No. 2017081176
LOS ANGELES UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017100621 ORDER FOLLOWING PREHEARING CONFERENCE

On January 8, 2018, a telephonic prehearing conference was held before Administrative Law Judge Judith L. Pasewark, Office of Administrative Hearings. Patricia A. Van Dyke, Attorney at Law, appeared on behalf of Student. Donald Erwin, Attorney at Law, appeared on behalf of Los Angeles Unified 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 January 17, 18, 22, and 23, 2018, and continue day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at the Office of Administrative Hearings located at 15350 Sherman Way, Suite 300, Van Nuys, California 9106. 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.

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.

A. Student's issues are:

1) Did District deny Student a free appropriate public education by failing to tailor a program to meet her unique, chronic health needs from August 2015 through August 2017;

2) Did District deny Student a FAPE by failing to offer Student placement in an appropriate program in light of her circumstances to enable her to make educational progress from August 2015 through August 2017;

3) Student's Issue Three is dismissed;

4) Did District fail to provide Student a FAPE by placing her on home-hospital instruction from March 2016 through August 2017, rather than placing her on individualized home instruction with required services;

5) Did District fail to provide Student a FAPE by failing to assess her in a timely fashion after notice in August 2015;

6) Did District fail to provide Student a FAPE by failing to convene an individualized education program team meeting after each hospitalization between August 2015 and August 2017;[1]

7) Did District deny Student a FAPE by failing to implement the June 9, 2016 IEP;

8) Did District deny Student a FAPE by failing to convene an IEP team meeting when requested on March 16, 2017; and

9) Did District deny Student a FAPE by failing to ensure that Student had a current IEP for the 2017-2018 school years (12th grade)?

Student's requested resolutions are:

1) District commence an IEP team meeting within 30 days ;

2) In consultation with Student, Parent, Student's doctors, District develop an individually tailored placement of home instruction through Student that offers the level

[1] Student's counsel has been directed to identify each hospitalization at issue, by date and duration, and to provide District's counsel and the ALJ with this chronology prior to the beginning of hearing.

of instruction and related special education services that Student can tolerate while making progress towards graduation and college attendance, or in the alternative, placement in anon-public on-line school of Parent's choosing and related services, until Student has sufficient credits to graduate, and has achieved a grade-point average of 2.0;

3) District provide Student with 300 hours of compensatory education services of individual academic, vocational and transitional instruction from a non-public agency of Parent's choosing, including but not limited to tutoring in academic subjects such as math, English and Spanish, college exam test preparation, study skills, driver's education and college counseling, to be accessed over a two-year period.

B. District's issue is:

1) Is District's April 29, 2016 psycho-educational assessment appropriate pursuant to state and federal law?

As remedy, District is requesting a determination that the April 29, 2016 psycho-educational assessment is appropriate , therefore District is not obligated to provide Student an independent educational evaluation at public expense.

The parties shall meet and confer by January 11, 2018, to further discuss whether District's sole issue is moot, as Student's amended complaint makes claims asserting a request for an IEE. In the event the parties agree the issue is moot, District shall file with OAH a Notice of Withdrawal or Dismissal prior to the first day of hearing.

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.

Each exhibit shall consist of one document; separate documents may not be combined into one exhibit. To the extent practicable, exhibits in the exhibit binders shall be in chronological order.

District shall include as part of its exhibits the school calendar(s) for all of the years at issue. Notwithstanding the requirements of Education Code section 56505, subd. (e)(7), District shall serve a copy of the school calendar(s) on Student by January 12, 2018, and include the school calendar(s) in the binders provided for use by the witnesses and the ALJ.

If the parties intend to rely on IEP's, the parties shall include all pages of the IEP(s), including copies of all actual signatures on the IEP(s) and any typewritten or handwritten notes or comments, if any, written on the IEP(s). Excerpts of an audio record of an IEP team meeting, if any, should, in addition to the audio record offered, be transcribed and offered as documentary evidence; that portion of the audio record transcribed shall be provided to the opposing party along with the transcript to allow an opportunity to verify the accuracy of the transcription. Transcriptions need not be prepared by a certified court reporter.

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 it is supported by written declaration under penalty of perjury, and the ALJ rules that it is admissible. Education Code section 56505, subd. (e)(8), affords each party the right to prohibit the introduction of any evidence at the hearing that has not been disclosed at least five business days before the hearing.

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 shall meet and confer on or before January 11, 2018, to determine the witness list for the first day of hearing. District 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. Neither party has requested 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.

7. Electronic Recording of Hearing.

a. Audio Recording. Each party may make an audio recording of the hearing, 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, 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.

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 primary party. Accordingly, Student shall present its case-in-chief, followed by District.

9. Motions. Student's Issue Three alleges District discriminated against Student on the basis of her disability and does not allege a denial of FAPE. The ALJ on her own motion, dismissed Student's Issue Three as outside the jurisdiction of OAH.

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education", and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a

disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 701 et seq.),Section 1983 of Title 42 United States Code (Section 1983),the Americans with Disability Act (ADA) (Title 42 U.S.C. §§ 1201, et seq.)and the Unruh Civil Rights Act (Civ. Code, § 51). Thusly, Student's Issue Three must be dismissed as outside the jurisdiction of OAH.

No other 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 of January 8, 2018.

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. Student requires an Arabic translator. No other special accommodations have been requested.

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 To the Public. At the request of Student, the hearing will be open to the public. With the exception of Parents, Student and District's representative, all witnesses shall be excluded from the hearing room until such time as the witnesses' testimony, including rebuttal testimony, has been completed.

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.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: January 9, 2018

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Judith Pasewark
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JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings