BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. HUNTINGTON BEACH UNION HIGH SCHOOL DISTRICT, HUNTINGTON BEACH CITY SCHOOL DISTRICT.	OAH CASE NO. 2013100097
HUNTINGTON BEACH UNION HIGH SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2014010095 ORDER FOLLOWING PREHEARING CONFERENCE

On January 31, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Susan Ruff, Office of Administrative Hearings (OAH). James Peters III, educational advocate, appeared on behalf of Student and Student's parent (Student). Karen Van Dijk, Attorney at Law, appeared on behalf of the Huntington Beach Union High School District (High School District). Ernest Bell, Attorney at Law, appeared on behalf of the Huntington Beach City School District (Elementary School District). The PHC was recorded.[1]

Based on discussion of the parties, the ALJ issues the following order:

1. Hearing Dates, Times, and Location. The hearing is continued on the High School District's motion and shall begin on Tuesday, February 11, 2014, at 9:30 a.m. The hearing shall continue at 9:30 a.m. on February 12, 13, 18, 19, and 20, 2014, and shall continue day to day thereafter, Monday through Thursday, as needed at the discretion of the ALJ, unless otherwise ordered.

The hearing shall take place at the High School District office located at 5832 Bolsa Avenue, Huntington Beach, California, 92649.

[1] The West Orange County Consortium for Special Education was previously a party to this case, but was dismissed by OAH order on December 24, 2013.

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. The issues at the due process hearing, as clarified during the PHC, are listed below.

Student's Issues Involving the Elementary School District:

a) From September 30, 2011, through the end of the 2011 – 2012 school year, did the Elementary School District deny Student a free appropriate public education (FAPE) by failing to assess Student appropriately in the areas of psychology, behavior, and counseling?

b) From September 30, 2011, through the end of the 2011 – 2012 school year, did the Elementary School District deny Student a FAPE by failing to identify Student's eligibility appropriately?

c) From September 30, 2011, through the end of the 2011 – 2012 school year, did the Elementary School District deny Student a FAPE by failing to place Student in a locked housing facility at a residential treatment center?

d) From September 30, 2011, through the end of the 2011 – 2012 school year, did the Elementary School District deny Student a FAPE by failing to offer appropriate behavior services to Student?

e) From September 30, 2011, through the end of the 2011 – 2012 school year, did the Elementary School District deny Student a FAPE by failing to offer appropriate parent training?

f) From September 30, 2011, through the end of the 2011 – 2012 school year, did the Elementary School District deny Student a FAPE by failing to offer an appropriate functional behavior assessment (FBA)?

g) From September 30, 2011, through the end of the 2011 – 2012 school year, did the Elementary School District deny Student a FAPE by failing to offer appropriate psychology/counseling sessions?

h) From September 30, 2011, through the end of the 2011 – 2012 school year, did the Elementary School District deny Student a FAPE by failing to offer appropriate behavior health counseling and psychologist services to Student's parent?

i) Did the Elementary School District deny Student a FAPE by failing to permit Student's custodial parent appropriate participation in the IEP meeting held on March 26, 2012?

Student's Issues Involving the High School District

a) Did the High School District deny Student a FAPE from June 2012 through September 30, 2013, by failing to conduct individualized education program (IEP) meetings in a timely and appropriate manner?

b) From June 2012, through the end of the extended school year (ESY) period at the end of the 2013 – 2104 school year, did the High School District deny Student a FAPE by failing to assess Student appropriately in the areas of psychology, behavior and counseling?

c) From June 2012, through the end of the ESY period at the end of the 2013 – 2104 school year, did the High School District deny Student a FAPE by failing to place Student in a locked housing facility at a residential treatment center?

d) From June 2012, through the end of the ESY period at the end of the 2013 – 2104 school year, did the High School District deny Student a FAPE by failing to offer appropriate behavior services to Student?

e) From June 2012, through the end of the ESY period at the end of the 2013 – 2104 school year, did the High School District deny Student a FAPE by failing to offer appropriate parent training?

f) From June 2012, through the end of the ESY period at the end of the 2013 – 2104 school year, did the High School District deny Student a FAPE by failing to offer an appropriate FBA?

g) From June 2012, through the end of the ESY period at the end of the 2013 – 2104 school year, did the High School District deny Student a FAPE by failing to offer appropriate psychology/counseling sessions?

h) From June 2012, through the end of the ESY period at the end of the 2013 – 2104 school year, did the High School District deny Student a FAPE by failing to offer appropriate behavior health counseling and psychologist services to Student's parent?

i) From June 2012, through the end of the ESY period at the end of the 2013 – 2104 school year, did the High School District deny Student a FAPE by failing to consider Dr. Ross's and Dr. Paltin's recommendations that Student be placed in a locked residential treatment center?

j) Did the High School District deny Student a FAPE at the February 20, 2013 IEP meeting by developing an IEP without parental participation and then offering it to Student's parent for ratification with a "take it or leave it" position?

High School District's Issue:

a) Did the District's placement and related services offered in the IEP amendment dated September 23, 2013, offer a FAPE to Student in the least restrictive environment (LRE)?

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").[2] Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be consecutively paginated, for example by Bates-stamping. Each exhibit binder shall contain a detailed table of contents. 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. 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. During the PHC, the parties agreed that Robyn Moses and Ashley Stewart will testify during the first week of hearing because they will be unavailable the following week.

Student has identified 78 witnesses to be called at the hearing, and the two districts have identified over 40 witnesses. It would be impossible for that many witnesses to testify in a six-day hearing. By close of business on Tuesday, February 4, 2014, each party shall serve on the others a reduced witness list containing only the names of the witnesses the party actually intends to call to testify at the hearing.

The two districts have agreed to make current district employees available to testify as part of Student's case-in-chief without need for subpoena, as long as the Student provides the witness list described above by Tuesday. Nothing in this Order is intended to prevent

[2] During the PHC, the two school districts explained that they had prepared a joint exhibit book for the hearing.

either district from objecting to the appearance at hearing or testimony of any witness – this Order only addresses the need for Student to serve subpoena on district employees.

5. 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.

Student's motion to allow out-of-state witnesses from Island View to testify telephonically is granted. Up to four witnesses from Island View may testify telephonically. Student shall provide any Island View witnesses with a complete exhibit binder from each party, containing all of each party's exhibits, prior to the hearing.

The High School District's motion to permit Tim Marshall and Billie Gengler to testify telephonically is granted. The High School District shall provide the two proposed witnesses 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.

The Elementary School District does not plan to call any telephonic witnesses at this time, but gave notice that it may call Natasha Adamo telephonically. If that becomes necessary, the Elementary School District shall provide Ms. Adamo with a complete set of exhibit binders from all parties, containing all of each party's exhibits, prior to the hearing

6. Order of Presentation of Evidence. This matter is consolidated, and involves three parties. The order of presentation of evidence shall be as follows: Student shall present his case first. The Elementary School District shall present its case second and the High School District shall present its case third. If a witness is to be called by more than one party, each party shall ask all of its questions for the witness the first time the witness is called to the witness stand, to prevent the witness from having to be called to testify more than once.

7. Motions. Student made a motion to allow television and media cameras in the hearing room. That motion is denied. There shall be no video recording or photography of any kind in the hearing room by any party, attorney, advocate, witness or spectator.

The parties made motions to permit their attorneys/advocate to make an audio recording of the hearing. Their motions are granted on following conditions: 1) The recording by OAH shall be official record of the hearing; 2) The audio recording(s) shall remain confidential, shall be used only by Mr. Peters or the attorneys representing the parties, and shall not be disseminated to any other individual; 3) No portion of the audio recording shall be played to any potential witness in the case without explicit consent from the ALJ hearing the case; 4) The recording equipment shall only be running when the hearing is "on the record" and the recording equipment shall be turned off during recesses,

lunch and at any other time when the case is off the record; and 5) The hearing will not be stopped or delayed at any time to accommodate the recordings or any problems with the recording equipment.

Student made a motion to quash the subpoena duces tecum served by the High School District on Island View. The High School District opposed that motion to quash. Student plans to call witnesses from Island View to testify during the hearing and is seeking both reimbursement for the cost of Student's residency at Island View and placement of Student at Island View as remedies in this case. Student has specifically placed the appropriateness of Island View at issue in this matter and the motion to quash is denied. The High School District is entitled to receive the requested documents in order to properly present its defense to Student's case.

8. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

9. 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.

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. Special Needs and Accommodations. At present no party anticipates the need for special accommodation for any witness or party, or for translation services.

12. Hearing Open To the Public. At the request of the parent, the hearing will be open 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 4:00 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.

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

IT IS SO ORDERED.

Dated: January 31, 2014

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings