BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. TEMECULA VALLEY UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2014010234
TEMECULA VALLEY UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013120202 ORDER FOLLOWING PREHEARING CONFERENCE

On January 31, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Judith L. Pasewark, Office of Administrative Hearings (OAH). Wendy M. Housman, Attorney at Law, appeared on behalf of Parent on behalf of Student (Student). Jack B. Clarke, Jr., Attorney at Law, appeared on behalf of Temecula Valley Unified School District (District). The PHC was not recorded.[1]

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

1. Hearing Dates, Times, and Location. The hearing shall take place on February 6, 7, 10, 11, and 12, 2014, continuing day to day thereafter at the ALJ's discretion. The hearing shall take place at the District's offices located at 31350 Rancho Vista Road, Temecula, California 92592. The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:30 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.

[1] The ALJ's recording equipment was not functioning properly.

2. Issues and Proposed Resolutions. The issues at the due process hearing are listed below.

Student's issues are whether the District denied Student a FAPE by:

a) Failing to timely and appropriately assess Student in all areas of suspected disability, specifically in the areas of mental health, occupational therapy, assistive technology, and speech and language;

b) Failing to materially and appropriately provide Student with meaningful educational benefit in the June 3, 2013 IEP;

c) Failing to implement or timely revise, with parental consent, the positive behavior intervention plan contained in Student's June 3, 2013 IEP;

d) Failing to implement appropriate behavior intervention services by using restraints and seclusion on Student between August and October 2013;

e) Failing to appropriately consider Student's education placement in the least restrictive environment with appropriate supports and services in Student's June 3, 2013 IEP;

f) Unilaterally discontinuing Student's occupational therapy and behavioral intervention services contained in the June 3, 2013 IEP;

g) Failing to timely respond to Parent's request for production of Student's educational and behavioral records between August and October 2013;

h) Failing to timely provide Parents with a copy of Student's revised PBIP before implementing it; and failing to obtain parental consent;

i) Failing to appropriately and timely consider AT devices, specifically an IPAD, in the June 3, 2013 IEP;

j) Failing to meaningfully calculate the frequency and duration of Student's accommodations as noted in his June 3, 3013 IEP; and

k) Failing to timely complete the mental health and functional behavior assessments and to evaluate assessment findings within 60 days from initial parental consent.

The District issues are:

j) Whether the District entitled to conduct an educational related mental health services assessment pursuant to the assessment plan provided to Parents on October 23, and November 1, 2013; and

k) Whether the District's IEP held on October 24, 2013, offered Student FAPE.[2]

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 represent that they have served 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 ordered to meet and confer by February 4, 2014, to the schedule of witnesses. The parties shall coordinate the availability and order of testimony of witnesses to ensure 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 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 ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

5. Scope of Witness Examination. 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.

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[2] Based upon discussion with both parties, the ALJ clarified and rephrased the issues. Due to the sheer number of issues, the parties shall be allowed to review and discuss the revised issues on the first day of hearing, prior to the commencement of testimony.

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.

Student's motion to allow Dr. Pion to testify telephonically is granted. Student shall provide Dr. Pion with a complete exhibit binder from each party, containing all of each party's exhibits, prior to the hearing, and the District shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness.

7. Order of Presentation of Evidence. This matter is consolidated. The order of presentation of evidence shall be as follows: Student's case shall proceed first. If a witness if to be called by more than one party, then the District shall immediately follow with its direct examination of that witness.

8. Motions. During the PHC, the District raised an objection to Student's requested resolution of placement in an NPS at District expense, *or in the alternative, placement back in a District elementary school with the transition involving a private behavior intervention specialist to assist the family and District. Placement at the public elementary would have to include appropriate behavioral services and supports in place to allow Student to effectively access his curriculum.* The District contends the italicized portion of this resolution was not contained in Student's complaint, and was not discussed prior to its appearance in Student's PHC Statement. The District, therefore, requests that this portion of Student's requested resolutions be stricken. Due to the failure of the ALJ's recording equipment at the PHC, this motion shall be orally addressed by the parties on the first day of hearing, prior to the commencement of testimony.

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 31, 2014.

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, 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. The room shall be equipped with water for all parties and witnesses.

11. 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.

12. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for translation services.

13. Hearing Open To the Public. At the request of the parent, the hearing will be open to the public. The District is requested to make additional seating available, as needed.

14. 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.

Dated: January 31, 2014

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings