BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017110106
v.	ORDER FOLLOWING PREHEARING CONFERENCE AND DENYING MOTION IN LIMINE
PALO ALTO UNIFIED SCHOOL DISTRICT.	

On February 12, 2018, a telephonic prehearing conference was held before Administrative Law Judge Rita Defilippis, Office of Administrative Hearings. Christian Knox and Barbara Shufro, Attorneys at Law, appeared on behalf of Student. Elizabeth Rho-Ng, Attorney at Law, appeared on behalf of Palo Alto Unified School District. The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

1. Palo Alto's Motion in Limine to Exclude Witnesses' Testimony. At the beginning of the prehearing conference, Palo Alto made a Motion in Limine to exclude the testimony of Student's witnesses including Betty Krumboltz; Linda Herreshoff; Tami Warr; Ann Duesterberg; Tiffany Genasci; and Todd Daly on the grounds that these witnesses were involved with Student outside the timeframe of the two year statute of limitations and their testimony would therefore be irrelevant and consume an unnecessary amount of hearing time. Palo Alto did not establish good cause as to why this motion was not brought three days before the prehearing conference and therefore the motion is Denied. Any objections by Palo Alto as to the testimony of said witnesses will have to be made and ruled on at the time of their testimony at hearing.

2. Hearing Dates, Times, and Location. The hearing shall take place on February 20, 21, and 22, 2018, continuing day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at the Palo Alto High School's Athletic Director Commons Room, #2108, located at 50 Embarcadero Road, Palo Alto, California, 94301. 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, Palo Alto was to provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 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. Palo Alto failed to certify that the changed location at Palo Alto High School is a facility that complies with the law. Palo Alto shall file an updated certification with OAH within two days of the date of this order that it will provide a facility that complies with the law.

Prior to the beginning of the hearing, Palo Alto shall ensure that the hearing room is configured into a courtroom setting, including (1) a table for Student and his representatives; (2) a table for Palo Alto's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. Palo Alto shall also make reasonable effort to ensure that drinking water and tissue are available to all parties, witnesses and the ALJ.

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.

3. Issues and Proposed Resolutions. The issues at the due process hearing, and the proposed resolutions, are listed below.

Issues

1. Did Palo Alto deny Student a free, appropriate public education during the 2016-2017 school year by:

a. failing to provide measurable goals in all areas if need, including executive functioning, social skills, and social emotional functioning;

b. failing to provide adequate accommodations;

c. failing to implement Student's accommodations in his October 2016, and May, 2017, IEP's;

d. failing to provide Student with adequate services to address his executive functioning deficits;

e. failing to provide Student with adequate mental health services;

f. failing to provide Student with a safe learning environment, free from bullying;

g. failing to provide an adequate structured social skills program;

h. failing to timely provide an assessment plan in response to Parent's request referrals for assessments including assistive technology, speech and language and educationally related mental health services;

i. predetermining Student's May 9, 2017, IEP placement and services;

j. failing to provide Student with adequate speech and language therapy services;

k. failing to provide Student with assistive technology services, equipment, and software;

l. failing to offer or provide Student with one-to-one support; and

m. failing to provide prior written notice in response to Parent's requests for more emotional support for Student and more Student supports in the area of executive functioning?

2. Did Palo Alto deny Student a FAPE during the 2017-2018 school year, to October 31, 2017, by:

a. failing to provide measurable goals in all areas of need;

b. failing to provide adequate accommodations;

c. failing to implement Student's May 2017 IEP?

d. failing to provide Student with adequate services to address his executive functioning deficits;

e. failing to provide Student with adequate mental health services;

f. failing to provide an adequate structured social skills program;

g. predetermining his September 11, 14, and 26, 2017, IEP's;

h. failing to provide Student with adequate speech and language therapy services;

i. failing to provide Student with assistive technology services, equipment, and software;

j. failing to offer or provide Student with one-to-one support; and

k. failing to provide prior written notice in response to Parent's August 29, 2017, letter?

3. Did Palo Alto fail to adequately assess Student in all areas of suspected disability during the 2016-2017 and 2017-2018 school years to October 31, 2017, by

a. failing to conduct an assistive technology assessment;

b. failing to conduct a functional vision assessment;

c. failing to conduct a speech and language assessment?

Proposed Resolutions

1. Student seeks declaratory relief that Palo Alto denied Student a FAPE during the 2016-2017 and 2017-2018 school year up to February 20, 2018.

2. Palo Alto shall provide Student with compensatory education in the form of individual tutoring, speech and language therapy, social skills instruction, counseling, and direct instruction in executive functioning, including transportation to and from said services, in an amount according to proof at hearing.

3. Palo Alto shall reimburse Parent for all private educational costs incurred, including transportation to and from said services.

4. Palo Alto shall fund an independent educational evaluation in the area of functional vision, speech and language, and assistive technology.

5. Palo Alto shall convene an IEP team meeting and fund the independent assessors' attendance at the meeting. At the IEP team meeting goals in all areas of need shall be developed and appropriate accommodations, including teacher training shall be provided.

6. Prospectively, Palo Alto shall provide Student with a structured social skills program, direct one-to-one instruction in executive functioning and all academic areas, adequate counseling services, and assistive technology services, equipment, and software. Direct one-to-one instruction could include placement at Lydian Academy.

7. Student reserves the right to amend these proposed resolutions upon receipt of the independent assessments.

8. Palo Alto shall take all necessary steps to ensure that staff working with Student are well trained in bullying prevention and that Student is provided with a safe educational environment.

9. Palo Alto shall provide Student with such further relief, which is known or unknown to Student at this time, as deemed appropriate by the administrative law judge at the hearing on this matter.

4. 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.

Parties are encouraged to present resumes or curriculum vitae for each professional witness.

The District shall include a color copy of the school calendar for each school year in question and shall have witnesses available to testify as to any legend notations that might be unique to Palo Alto.

5. 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 except for good cause shown, and at the discretion of the ALJ.

During the prehearing conference, Student informed Palo Alto that Student's father, listed on Palo Alto's witness list, resides outside of the state and will require Palo Alto to issue a subpoena to secure his testimony at hearing. Student had no information regarding his address and Student's father is not a party to this case.

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.

6. 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.

7. Telephonic Testimony. Neither party has 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.

8. Electronic Recording of Hearing.

a. Audio Recording. Both Student and Palo Alto requested to audio record the hearing. Both parties' motions to make an audio recording of the hearing are 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; 3) the recording device will be removed by the party recording during any recess where the party leaves the room; and 4) 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.

9. 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 Palo Alto.

10. Motions. 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 three business days prior to the prehearing conference.

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

13. 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.

14. 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.

15. Hearing Closed To the Public. At the request of Student, the hearing will be closed to the public.

16. 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.

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

IT IS SO ORDERED.

DATE: February 12, 2018

DocuSigned by:
Rita DeFilippis
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RITA DEFILIPPIS
Administrative Law Judge
Office of Administrative Hearings