BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. MOUNTAIN VIEW-LOS ALTOS UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2016050172 ORDER FOLLOWING PREHEARING CONFERENCE

On August 15, 2016, a telephonic prehearing conference was held before Administrative Law Judge B. Andrea Miles, Office of Administrative Hearings. Roger A. Greenbaum, Attorney at Law, appeared on behalf of Student. Laurie E. Reynolds, Attorney at Law, appeared on behalf of Mountain View-Los Altos Union High 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 August 23-25, and 30, 2016, and continuing day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall be held at the District's offices located at 1299 Bryant Avenue, Mountain View, California 94040. 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, the named local educational agency 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. The named local educational agency failed to certify that it would provide a facility for this case that complied with the law. The local educational agency shall inform OAH within two days of the date of this order it is able to certify that it will provide a facility that complies with the law.

Prior to the beginning of the hearing, Mountain View-Los Altos shall assist the ALJ to ensure that the hearing room is configured into a courtroom setting, including (1) a table for Student and his representatives; (2) a table for Mountain View-Los Altos's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. Mountain View-Los Altos 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.

2. Issues and Proposed Resolutions.[1] The issues at the due process hearing, and the proposed resolutions, are listed below.

Issue 1: During the 2014-2015 school year, did Mountain View-Los Altos deny Student a free appropriate public education by committing the procedural violation of failing to have an individualized education program in place for Student at the beginning of the school year?

Issue 2: During the 2014-2015 and 2015-2016 school years, did Mountain View-Los Altos deny Student a FAPE by committing the procedural violations of failing to include in the March 25, 2015 IEP:

a. accurate present levels of performance; and

b. appropriate annual goals?

Issue 3: Did Mountain View-Los Altos deny Student a FAPE during the 2014-2015 and 2015-2016 school years by committing the following procedural violations during the March 25, 2015 IEP team meeting:

a. failing to consider a continuum of placement options;

b. predetermining its offer of placement at a therapeutic program at a local public high school; and

c. failing to engage in in-depth fact gathering regarding the creation of an Individualized Transition Plan?

[1] During the PHC, Issues 1 (a) and (b), and Issues 2 (a) and (b), as numbered in Student's PHC statement were dismissed, on the grounds that they were duplicative of Issues 2 (a) and (b) and Issues 6 (a) and (b), as numbered in this order. Additionally, Issue 5, as numbered in Student's PHC statement, was dismissed because it was not alleging a substantive or procedural violation, but instead was requesting the specific remedy of reimbursement for a unilateral placement by Parents. The referenced issues were dismissed over Student's objection.

Issue 4: Did Mountain View-Los Altos deny Student a FAPE during the 2014-2015 school year by failing to offer and provide Student appropriate:

a. services and placement;

b. Individualized Transition Plan; and

c. extended school year services?

Issue 5: During the 2015-2016 school year, did Mountain View-Los Altos deny Student a FAPE by committing the procedural violation of failing to have an IEP in place for Student at the beginning of the school year?

Issue 6: During the 2015-2016 school year, did Mountain View-Los Altos deny Student a FAPE by committing the procedural violations of failing to include in the April 8, 2016 IEP:

a. accurate present levels of performance; and

b. appropriate annual goals?

Issue 7: Did Mountain View-Los Altos deny Student a FAPE during the 2015- 2016 school year by committing the following procedural violations during the April 8, 2016 IEP team meeting:

a. failing to consider a continuum of placement options; and

b. predetermining its offer of placement as a therapeutic program at a local public high school; and

c. failing to engage in in-depth fact gathering regarding the creation of an Individualized Transition Plan?

Issue 8: Did Mountain View-Los Altos deny Student a FAPE during the 2015-2016 school year, beginning April 8, 2016, by failing to offer and provide Student appropriate:

a. services and placement; and

b. Individualized Transition Plan?

Proposed Remedies:[2]

Student seeks reimbursement for the following: cost of tuition at Waterfall Canyon/Oak Grove School from March 25, 2015 "to present" (approximately $9,800 per month); transportation expenses to place Student at Waterfall Canyon/Oak Grove School (approximately $5,000); expenses related to the therapeutic family visits required by Waterfall Canyon/Oak Grove School; fee of the educational consultant (approximately $5,000); and attorney's fees and costs.

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 timely exchanged shall not be admitted into evidence at the hearing unless the ALJ rules that it is admissible.

4. Witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses. However, 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.

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. That written witness list shall be provided to the ALJ on the first day of hearing. In the event that the parties cannot reach an agreement on the witness list, then both parties shall provide their own witness list to the ALJ on the first day of hearing. Mountain View-Los Altos 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

[2] The proposed remedies listed in this order are merely a summary of those requested by Student in his PHC statement. This summary and is not meant to limit Student's argument for proposed remedies as detailed in his PHC statement.

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. 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 Robert Law, Ebbie Cabrera, Sharon Brown, Darlene Pinkston, Carey Lillehaug, Melissa Gendreau, Briana Bielmeier, Cari Colegrove, Megan McCormick, David Ammend, Caleb Melton, Tyler Granrath, Keeley Geraghty, Martin Wilson, Robbie Dana, R. Davenport, M. Caldwell, D. Roskelley, S. Abner, S Ciraulo, J. Henderson, K. Adams, K. Beddes, Himanshu Agrawal, Matt Meyer, and Kyle Newkirk to testify telephonically is granted. Student shall provide the witness with a complete exhibit binder from each party, 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.

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. If Mountain View-Los Altos desires to make such a recording, It shall move for leave to do so in advance of the hearing, and the same conditions shall apply.

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 petitioning party. Accordingly, Student shall present its case-in-chief, followed by Mountain View-Los Altos.

9. Motions. No 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 August 15, 2016. However, any motion to reconsider the reframing of the issues by the ALJ in this order does not require any such declaration.

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. 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/Accessibility.aspx.

14. Hearing Open/Closed To the Public. Pursuant to Student's request, 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: August 16, 2016

DocuSigned by:
Andrea Miles
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B. ANDREA MILES
Administrative Law Judge
Office of Administrative Hearings