BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013010236
v.	ORDER FOLLOWING PREHEARING CONFERENCE
NEW HAVEN UNIFIED SCHOOL DISTRICT.	

On April 8, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Peter Paul Castillo, Office of Administrative Hearings (OAH). Nicole Hodge Amey, Attorney at Law, appeared on behalf of Student. Laurie E. Reynolds, Attorney at Law, appeared on behalf of New Haven Unified School District (District). The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on April 16 through 18, 2013. The hearing shall begin at 9:00 a.m. and end at 5:00 p.m., except for April 16, 2013, when the hearing shall begin at 9:30 a.m., unless otherwise ordered. The hearing shall take place at the District's offices, located at, 34200 Alvarado Niles Road, Union City, California, 94587.[1]

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 are listed below.

[1] At a minimum for the hearing, the room shall have separate tables capable of being moved into a courtroom configuration, as follows: (1) one table for Student's representatives; (2) one table for the District's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table. The District shall ensure that all parties and the ALJ have drinking water and tissue available to them.

Issue 1: From January 8, 2011, did the District deny Student a free appropriate public education (FAPE) by failing to draft appropriate and measurable goals?

Issue 2: From January 11, 2011, did the District fail to assess Student in all areas of suspected disability by failing to conduct a timely triennial assessment and functional behavior assessment or functional analysis assessment?

Issue 3: From January 11, 2011, did the District deny Student a FAPE by failing to accurately measure Student's present levels of performance?

Issue 4: From January 2008 through March 2011, did the District fail to provide Parent with a sign language interpreter for the individualized education program (IEP) team meetings, which violated Parent's procedural rights, since it prevented Parent from meaningfully participating in Student's educational decision-making process.[2]

Proposed Resolutions: Student requests that the District provide as compensatory education 100 hours of intensive academic tutoring. The District shall also pay for independent assessments. The District shall ensure that it provides a sign language interpreter at IEP team meetings and will review past assessments and IEP's with Parent with the interpreter. Finally, Student requests a placement that meets his unique needs.

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. By 5:00 p.m. on April 9, 2013, the parties shall 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

[2] Student's allegations are technically outside the two-year statute of limitations. However, a triable issue for hearing exists whether the statute of limitations is tolled because Parent was prevented from knowing her procedural rights because the District failed to provide her a sign language interpreter, which would constitute the local educational agency's withholding of information from the parent that it was required to be provided to the parent. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C) & (D).)

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 April 12, 2013, as to the schedule of witnesses, and have agreed to coordinate the availability and order of testimony of witnesses to ensure that there is a witness available to testify at all times during the hearing, and to ensure that the hearing is completed as scheduled. By 1:00 p.m. on April 15, 2013, each party shall serve on the other party and on the ALJ, the final witness list, including the anticipated order of the witnesses to be called at the hearing, an estimate of the length of time for the direct examination of each witness the party actually intends to call, along with time estimates for the testimony of any additional witnesses the party may call, depending on the flow of the hearing and the evidence.[3] Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. 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.

The following witnesses will be called to testify by Student: Parent, Thora Cahill, Gretchen Sustachek, Kris Relen, Kristen Peterson, Carrie Igondijo, Jennifer Carini, and Kimberley Christian.

The following witnesses will be called to testify by the District: Parent, Sarah Kappler, Jessica Ingersoll-Cope, Jen Vigil, Kim Christian, Anthony La Rue, Mike Piette, Kristen Peterson, D. LaHar, Jennifer Carini, Quyen Bullar, Duffy Jolley, Marvin Amaral, Deborah Perry, and Brenda Loggins.

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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[3] Parties shall not mail a hard copy of any document to OAH that has already been filed by facsimile transmission.

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. Neither party requested telephonic testimony.

7. Motions.

A. Motion to Dismiss. On March 27, 2013, the District filed a motion to dismiss because Student has exited special education with Parent consent, and therefore made Student's complaint moot. Student did not file an opposition. The parties further discussed the District's motion at the PHC.

Under the doctrine of mootness, a court may refuse to hear a case because it does not present an existing controversy by the time of decision. (*Wilson v. Los Angeles County Civil Service Com.* (1952) 112 Cal.App.2d 450, 453.) However, mootness is not a jurisdictional defect. (*Plymouth v. Superior Court* (1970) 8 Cal.App.3d 454, 460.) A case may be moot when the court cannot provide the parties with effectual relief. (*MHC Operating Ltd. Partnership v. City of San Jose* (2003) 106 Cal.App.4th 201, 214.) An exception to the mootness doctrine is made if a case presents a potentially recurring issue of public importance. (*DiGiorgio Fruit Corp. v. Dept. of Employment* (1961) 56 Cal.2d 54, 58.)

Even if Student exited from special education in February 2013, Student may be entitled for relief, especially compensatory education, if he prevails on any of the four issues for hearing. Therefore, a triable issue for hearing exists whether the denied Student a FAPE, and if so the remedy Student is entitled to receive. Accordingly, the District's motion to dismiss is denied.

B. Further 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 April 8, 2012.

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 during the hearing unless permission to the contrary is obtained from the ALJ.

10. Compensatory Education/Reimbursement. 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. A sign language interpreter is required for Mother.

At present neither party anticipates the need for any other special accommodation for any other witness or party, or for translation services.

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

13. Settlement. The parties are encouraged to continue their attempts 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. If a settlement is reached five business days or fewer before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact by telephone at (916) 263-0880. 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. IF A FULL AND FINAL SETTLEMENT IS REACHED AFTER 5:00 P.M. ON THE LAST BUSINESS DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035, AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. The ALJ will check for messages the evening prior to the hearing and the morning of the hearing.

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

IT IS SO ORDERED.

Dated: April 9, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings