BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

| | |
|---|---|
| In the Matter of: | |
| PARENT ON BEHALF OF STUDENT, | OAH Case No. 2017100838 |
| v. | ORDER: |
| MENIFEE UNION SCHOOL DISTRICT. | 1) CONTINUING DUE PROCESS HEARING;<br><br>2) REOPENING RECORD FOR ADDITIONAL TESTIMONY;<br><br>3) SETTING CONTINUED DUE PROCESS HEARING DATE;<br><br>4) REQUIRING REPLACEMENT PAGES OF EXHIBITS; AND<br><br>5) PROVIDING NOTICE OF INTENT TO TAKE OFFICIAL NOTICE OF ADDITIONAL CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATION |

On December 12, 13, 14, and 18, 2017, the Office of Administrative Hearings convened a due process hearing for the above-captioned matter. Parent appeared on behalf of Student. Cynthia Vargas, Attorney at Law, appeared on behalf of Menifee Union School District. On December 18, 2017, after the parties stated they had no further witnesses, the Administrative Law Judge discussed with the parties the possibility that the ALJ would exercise her authority under Education Code section 56505.1, subdivision (d), to call District employee DiAnna Cullen, Adapted Physical Education Specialist, as a witness. The parties argued the issue on the record; Parent consented to the ALJ calling Ms. Cullen, but District's attorney did not consent. The parties requested to file written closing arguments and OAH continued the matter to January 8, 2018, at noon, for the parties to file written closing arguments. The ALJ advised the parties she would review the documentary evidence that had been admitted, and the testimony of the witnesses the parties had called, and determine whether she needed additional evidence to decide the case.

Based upon review of the evidence submitted in the case, the ALJ issues the following order:

1. Due Process Hearing is Continued. The parties are not required to submit written closing arguments by noon on January 8, 2018. The due process hearing is continued for additional testimony as stated below.

2. Record Reopened for Additional Testimony. Pursuant to Education Code section 56505.1, subdivision (d), the ALJ calls Ms. Cullen to testify. Also, the ALJ re-calls District contractor Mary Mertz, Physical Therapist. Further, the ALJ re-calls District's Special Education Director Jodi Curtis. Ms. Cullen shall testify first, followed by Ms. Mertz, followed by Ms. Curtis. At the conclusion of the testimony of these three witnesses, the parties will be given the opportunity to call rebuttal witnesses.

District shall contact Ms. Mertz to inquire about her availability on the date and time specified in Paragraph 3, below. If District contends it does not have control of Ms. Mertz and Ms. Mertz requires a subpoena to testify, District shall notify OAH in writing by 5:00 p.m. on January 8, 2018.

3. Hearing Dates, Times, and Location. The hearing shall take place on January 17, 2018, and continuing day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall begin at 9:30 a.m. the first day and any subsequent days, unless otherwise ordered. The hearing shall take place at District's office located at 29775 Haun Rd., Menifee, CA 92586.

If Parent or District, including District's employees and contractor called as witnesses, is unavailable on January 17, 2018, the parties shall meet and confer to discuss a mutually available date on a Tuesday, Wednesday, or Thursday after January 17, 2018, and move OAH to further continue the due process hearing to mutually agreeable dates. If the parties are unable to reach an agreement regarding mutually available dates, the party who is unavailable on January 17, 2018, shall, by 5:00 p.m. on January 9, 2018, move OAH to continue the due process hearing based upon a showing of good cause, supported by declarations and exhibits as appropriate.

4. Exhibit Pages to Be Replaced. Text of pages in some exhibits was cut off. Also, an exhibit was missing a page in both the witness and ALJ binders. Therefore, both Student and District are ordered to file with OAH by 5:00 p.m. on January 10, 2018, fully legible copies of the following exhibit pages:

a) IEP dated 11/15/2016, internal page 4 of 29, admitted as Student's Exhibit 33, page 245;

b) June 2017 Annual Goals and Objectives Progress Report for 11/15/2016 IEP, admitted as Student's Exhibit 36, pages 285-289; and

c) Menifee Union School District's Closing Brief, OAH Case No. 2017060872, internal page 24, admitted as Student's Exhibit 36, page 317.

5. Notice of Intent to Take Official Notice. On December 13, 2017, Student sought to admit a publication of the California Department of Education, Special Education Division, titled *Adapted Physical Education Guidelines in California Public Schools, Revised 2012*. After argument on the record, the parties stipulated to the ALJ taking official notice of the California Department of Education publication. The document was designated as "CDEAPE."

CDEAPE, page 51, refers to another publication by the California Department of Education, *Guidelines for Occupational Therapy and Physical Therapy in California Public School (Second Edition), 2012*. The ALJ is considering also taking official notice of *Guidelines for Occupational Therapy and Physical Therapy in California Public School (Second Edition), 2012*. The parties may file a written statement of position regarding the ALJ also taking official notice of *Guidelines for Occupational Therapy and Physical Therapy in California Public School (Second Edition), 2012* by noon on January 16, 2018, or may orally state a position at the time of the continued due process hearing.

IT IS SO ORDERED.

DATE: January 4, 2018

DocuSigned by:
Kara Hatfield
8085C9417D1C4CF...

KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings