BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. LODI UNIFIED SCHOOL DISTRICT,	OAH Case No. 2017070105
LODI UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017061238 AMENDED ORDER FOLLOWING PREHEARING CONFERENCE AND DENYING LODI UNIFIED SCHOOL DISTRICT'S MOTION TO DISMISS STUDENT'S ISSUE ONE[1]

On August 21, 2017, a telephonic prehearing conference was held before Administrative Law Judge Rita Defilippis, Office of Administrative Hearings. Alfonso Padron, Advocate, appeared on behalf of Student. Parent was present for the prehearing conference. Mr. Padron provided interpretation for Parent. Colleen Villarreal, Attorney at Law, appeared on behalf of Lodi Unified School District. The PHC was recorded.

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

1. Motion to Dismiss. On August 21, 2017, Lodi filed a Motion to Dismiss Student's issue one, as it pertains to the 2014-2015 school year, which is outside the two year statute of limitations. Argument was heard on the Motion to Dismiss and it was denied because Student's dates in issue one were found to be a typographical error. Counsel for Lodi agreed that it was put on notice that the claims were regarding the 2015-2016 school year instead by the language in the rest of Student's complaint. The reworded issue, as stated below and in the August 21, 2017 prehearing conference order, reflects the change to the 2015-2016 school year.

[1] This amended order adds the written order on Lodi's Motion to Dismiss Student's issue one, as it pertains to the 2014-2015 school year, outside the statute of limitations.

2. Hearing Dates, Times, and Location. The hearing shall take place on August 29, 30 and 31, 2017, continuing day to day, Monday through Thursday, at the discretion of the ALJ. Lodi's request to change the location of the hearing was granted, without Student objection. The hearing shall take place at Needham West, Portable 8, located at 421 South Pleasant Avenue, Lodi, California, 95240. 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, Lodi 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. Lodi failed to certify that it would provide a facility for this case that complied with the law. Lodi 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, Lodi 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 Lodi's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. Lodi 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.

Student's Issues

1. Did Lodi fail to provide Student a free and appropriate public education during the 2015-2016 and 2016-2017 school years by:

a. failing to develop measurable IEP goals and baselines for academic and functional goals;

b. failing to modify Student's IEP to include specialized instruction when scores have been low;

c. failing to provide a credentialed teacher instead of a para-educator; and

d. failing to provide Student with educational benefit?

2. Did Lodi fail to allow Parent the opportunity to participate in the decision-making process regarding the provision of FAPE to Student by:

a. Lawrence Elementary school staff not allowing Parent the opportunity to participate in the scheduled IEP meeting on August 15, 2016; and

b. attempting to intimidate and harass parent ?

c. Lodi proposing to change Student's placement without prior written notice or without the opportunity for Parent participation?

3. Did Lodi Deny Parent s' participation by denying Parents' requests for psychoeducational assessments to identify Student's additional needs?

Student's Proposed Resolutions

1. Student requests an order that he prevailed on all issues.

2. Lodi shall fund compensatory educational services of 1 hour of specialized instruction per each school day, for the previous 2 years, that Student has been denied FAPE and an opportunity to advance academically.

3. Lodi shall fund an independent educational evaluation due to failure to assess Student when requested.

District's Issues

1. Does Lodi have the right to assess Student pursuant to the assessment plan dated March 15, 2017, without the consent of Parents?

2. Is Lodi entitled by law to decline Parents' request for an independent educational evaluation?

District's Proposed Resolutions

1. Lodi Requests an order permitting Lodi to assess Student pursuant to the March 15, 2017 assessment plan, without the consent of Parents and for Parents to make Student reasonably available for the assessment.

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 Lodi.

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.

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.

Advocate for Parent agreed to withdraw paraeducators as witnesses from his witness list as the specific names were not listed and the witnesses' testimony would be duplicative.

Lodi informed Student that witness Summer Lange is unavailable for hearing due to maternity leave. Student agreed that Ms. Lange will not be called as a witness for Student at hearing.

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. Lodi requested to audio record the hearing. Student objected to Lodi's recording of the hearing as unnecessary due to OAH being the official recorder of the hearing. Lodi'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; 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. If Student desires to make such a recording, Lodi 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.

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].) This is a consolidated hearing. Student's case is the primary case. Accordingly, Student shall present its case-in-chief, followed by Lodi.

10. Motions. Lodi's request to change the venue of the due process hearing was granted without objection by Student. Lodi's Motion to Dismiss Student's issue one, due to the 2014-2015 school year being outside the statute of limitations, was denied as Student's reference to the 2014-2015 school year was a typographical error. Student's corrected issue reflects the discussion and is listed above. 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.

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. 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. A Spanish language interpreter is required by Parents at hearing. A Spanish language interpreter will be provided at hearing.

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 Open To the Public. At the request of Student, the hearing will be open 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 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.

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

IT IS SO ORDERED.

DATE: August 25, 2017

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Rita Defilippis
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RITA DEFILIPPIS
Administrative Law Judge
Office of Administrative Hearings