BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. EAST WHITTIER CITY SCHOOL DISTRICT,	OAH Case No. 2015030657
EAST WHITTIER CITY SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2015010880 ORDER FOLLOWING PREHEARING CONFERENCE

On Monday, June 1, 2015, a telephonic prehearing conference was held before Administrative Law Judge Ted Mann, Office of Administrative Hearings. Patricia Valenzuela, Attorney at Law, and Lauren-Ashley Caron, Attorney at Law, appeared on behalf of Student. Darin Barber, Attorney at Law, appeared on behalf of East Whittier City School District. The prehearing conference was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on June 8 – 11, 2015, and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin each day at 9:00 a.m. and end at 5:00 p.m. with the exception of the first day of hearing, on which day the hearing shall begin at 1:30 p.m. The hearing shall take place at the Whittier Area Cooperative Special Education Program offices located at 8036 Ocean View Avenue, Whittier, California, 90602.

The hearing room shall comply 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), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.

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.

Student's Issues

A. Whether East Whittier deprived Student of a free appropriate public education for the 2013-2014 and 2014-2015 school years by reason of the following:

1. Failing to assess Student in all areas of disability, so as to result in an individualized education program that failed to address all areas of Student's needs;

2. Impeding Parent's right to meaningfully participate in the IEP process by not considering Parent's input in both the evaluation and placement of Student.

B. Whether East Whittier denied Student a free appropriate public education by not developing an IEP within sixty days after Mother's consent on Jan. 22, 2014 to District's Jan. 2014 assessment plan.

Student's proposed resolutions include an order providing that District violated Student's rights under the IDEA, an IEP team meeting to change Student's eligibility, placement at a non-public school, parent training regarding Student's disability, compensatory education and services, and reimbursement for an independent educational evaluation and costs incurred by Parent for providing private services for Student.

East Whittier's Issues

A. Whether East Whittier's psychoeducational report, dated Feb. 24, 2014, was appropriate, such that Student is not entitled to an independent educational evaluation at East Whittier's expense.

District seeks an order that the psychoeducational assessment was appropriate such that District is not obligated to provide an independent educational evaluation of Student at public expense.

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 represent that they will serve their evidence binders

on each other in compliance with Education Code section 56505, subdivision (e)(7) by the close of business on Monday, June 1, 2015. 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 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 the close of business on Thursday, June 4, 2015, as to the order and schedule of witnesses in order 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. The District shall have witnesses available in case agreement on a witness list is not reached.

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 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. 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.

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 Dr. Kimberly Kayser to testify telephonically is granted based upon Student's attorney's representation that the witness will be on vacation at the time of the hearing. Student shall provide Dr. Kayser with a complete exhibit binder from each party, containing all of each party's exhibits, prior to the hearing, and shall arrange for the testimony to be taken in a private location with no other persons present. District shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness.

Additionally, the parties are ordered to meet and confer by the close of business on Thursday, June 4, 2015, as to any additional witnesses that Student seeks to have testify by telephone. If no agreement between the parties is reached, the hearing judge will rule on Student's motion for telephonic testimony of additional witnesses at time of hearing.

7. Timely Disclosure of Witnesses/Exhibits. Education Code section 56505, subdivision (e)(7), provides for disclosure of witnesses and exhibits at least five business days prior to the hearing.

8. Order of Presentation of Evidence. This matter is consolidated, and involves two parties. The parties are ordered to meet and confer by the close of business on Thursday, June 4, 2015, as to the order of presentation of evidence. If no agreement between the parties is reached, District shall have witnesses available to testify, and shall present its witnesses and evidence first. If a witness if to be called by more than one party, then the testimony from such a witness shall be obtained by both sides in consecutive order, beginning with the party first calling the witness, and continuing until questioning of a particular witness is concluded.

9. Motions. As noted above, Student's motion to allow Dr. Kayser to testify by telephone is granted subject to the previously listed conditions. A ruling on Student's motion for other witnesses to testify by telephone is reserved to the first day of hearing, pending the outcome of the parties attempt to meet and confer, and subject to the hearing judge's discretion.

During the prehearing conference, Student's attorney made a motion to audio record the hearing. That motion is granted on the following conditions: 1) The recording by the Office of Administrative Hearings shall be the official record of the hearing; 2) The District may also audio record the hearing; 3) The audio recording(s) shall remain confidential and shall be used only for purposes of the hearing; 4) If a motion to exclude witnesses is made and granted, no portion of the audio recording shall be played to any potential witness in the case without explicit consent from the ALJ hearing the case; 5) The recording equipment shall only be running when the hearing is "on the record" and the recording equipment shall be turned off during recesses, lunch and at any other time when the case is off the record; 5) The hearing will not be stopped or delayed at any time to accommodate the recordings or any problems with the recording equipment; 6) Only audio recording will be permitted; there shall be no video recording or photography in the hearing room at any time; and 7) Only

District's attorney and Student's attorney shall be permitted to make the recordings; no other participants or observers shall record any part of the hearing.

During the prehearing conference, Student's attorney made a motion to exclude all potential witnesses who have not testified from the hearing with the exception of Student's parents, and to limit the District to one representative who will not testify at the hearing. Student's motion is granted with the exception that the District may have a representative, who may also be on a witness list, present throughout the hearing.

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

11. 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.

12. 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.

13. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for translation services. A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk at (916) 263-0880, the OAH ADA Coordinator at OAHADA@dgs.ca.gov, or (916) 263-0880 as soon as the need is made known. Additional information concerning requests for reasonable accommodation is available on OAH's website at http://www.dgs.ca.gov/oah/Home/Accommodations.aspx.

14. Hearing Open/Closed To the Public. At the request of the parent, 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.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement as noted above, the parties shall submit a request for a status conference and provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

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

IT IS SO ORDERED.

DATE: June 01, 2015

/S/

TED MANN
Administrative Law Judge
Office of Administrative Hearings