BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. DOWNEY UNIFIED SCHOOL DISTRICT,	OAH Case Nos. 2011050579 (Primary Case) and 2010100321
DOWNEY UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2011030557 STATUS CONFERENCE ORDER RE: SETTING OF PREHEARING CONFERENCE AND DUE PROCESS HEARING FOR SUPPLEMENTAL TESTIMONY ON REMAND OF ISSUES

On February 13, 2015, Administrative Law Judge Darrell Lepkowsky of the Office of Administrative Hearings held a telephonic Status Conference in this case regarding the remand of a decision issued by the United States District Court for the Central District of California in Case No. CV-12-2285GW (SSx). Karen Gilyard, attorney for Downey Unified School District, and Patricia Valenzuela and Lauren-Ashley Caron, attorneys for Student, participated in the Status Conference.

The ALJ requested that the parties file a timeline with OAH detailing whether any of the assessments at issue in the underlying case were ever administered by District and, if so, when the assessments were done. Both parties timely filed the information on February 18, 2015.

In the underlying case, Student alleged that District failed to conduct the assessments detailed in assessment plans dated March 22, 2010, and November 23, 2010, to which his mother had consented through her attorneys. Both parties agree that subsequent to those dates, District conducted triennial assessments of Student in the areas of occupational therapy, speech and language, and psycho-educational in February and March, 2013. It appears that District, to date, has not administered several assessments to Student, which were included either in the March 22, 2010 assessment plan, the November 23, 2010 assessment plan, or both:

a. An adaptive behavior assessment to be administered by a school psychologist;

b. A functional behavior assessment to be administered by a special education teacher and a school psychologist;

c. A motor performance / physical fitness assessment administered by an adapted physical education teacher; and

d. An audiology assessment administered by an audiologist and a school nurse.

Student contends that he should be permitted to present evidence that District's failure to administer the assessments after his mother gave consent to them has caused him a continued deprivation of educational benefit.

After due consideration and noting that the assessments in question were either not administered until 2013, or not at all, the ALJ has determined that Student will be given the opportunity to present evidence, including testimony, in support of his contention that he has continued to suffer a deprivation of educational benefit due to the delay in administration of the assessments or District's failure to assess at all in the areas noted above.

Additionally, District raised as an issue on appeal the contention that it would not have been able to implement the portions of Student's IEP's to which Student's mother consented, given the scope of that consent. That issue was not addressed during the underlying due process hearing in this matter. District will therefore be given an opportunity to present evidence, including testimony, on that issue.

Therefore, based upon the above, and discussions with the parties at the two status conferences held in this matter on remand from the district court, the ALJ issues the following order:

1. **PREHEARING CONFERENCE:** A **mandatory** telephonic Prehearing Conference shall take place on March 27, 2015, at 1:00 p.m. The ALJ will conduct the PHC and will initiate the call.

2. **DUE PROCESS HEARING:** The Due Process Hearing on remand in this matter shall occur before ALJ Darrell Lepkowsky on April 14, 15, and 16, at 9:30 a.m. at District's offices located at **11627 Brookshire Ave., Downey, CA 90241.** Testimony on this matter shall be limited in scope and supplemental to the transcript of hearing and the December 21, 2011 decision issued by OAH in this case, which shall be admitted into evidence.

If these hearing dates are not available to the parties, they are ordered to meet and confer prior to the PHC to determine mutually acceptable hearing dates.

3. **ISSUES ON REMAND:**

I. Additional testimonial and/or documentary evidence will be taken on the following issues:

a. Was District unable to implement the portions of the Student's March 12, 2010 and September 21, 2010 IEP's to which Student's mother consented given the limited scope of her consent?

b. Did Student suffer a continuing loss of educational benefit until March 2013, based upon District's delay in administering assessments to him in the areas of psycho-educational, occupational therapy, and speech and language?

c. Has Student suffered a continuing loss of educational benefit due to District's failure to assess him in the areas of adaptive behavior, functional behavior, motor performance/physical fitness, and/or audiology?

II. Subsequent to the hearing on remand, the parties will file briefs addressing the following issues on remand, as well as the issues presented at the hearing:

d. Was the consent by Student's mother to the March 12, 2010 and September 21, 2010 IEP's clear and unambiguous?

e. If so, to what did she provide consent?

f. What portions of the consented to IEP's did District fail to implement?

g. If District failed to implement any portions of the IEP's to which Student's mother consented, was its failure to implement material?

h. If the failure was material, what evidence in the record supports Student's claim of a loss of educational benefit and to what remedy is Student therefore entitled?

i. What evidence in the record supports Student's contention that his mother's ability to participate in his IEP process was impeded?

j. Should the ALJ have expanded the record to include additional testimony regarding Student's alleged continued loss of educational benefit?

4. **PREHEARING CONFERENCE STATEMENT:** Each party is required to submit a Prehearing Conference Statement which shall be filed at least three business days prior to the Prehearing Conference with the Office of Administrative Hearings, Special Education Division, 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833. The Prehearing Conference Statement may be filed and served by facsimile transmission at

(916) 376-6319. The parties need not mail a hard copy of any document sent by facsimile transmission. Unless otherwise directed by the ALJ, the parties shall not send by mail or facsimile transmission copies of documentary evidence intended for the due process hearing to OAH. The Prehearing Conference Statement shall include the following:

a. Each party's estimate of the time necessary to complete the Due Process Hearing, noting that only two days will be allotted for rehearing;

b. The name of each witness or expert the party may call at the Due Process Hearing, a brief summary of the subject of the expected testimony of the witness or expert, and a description of the issue to which the testimony of the witness relates;

c. The name and address of each expert witness the party intends to call at the Due Process Hearing, a brief summary of the opinion that the expert is expected to give, and a description of the issue to which the testimony of the expert relates; and

d. A list of documentary evidence that the party intends to present, and a description of any physical or demonstrative evidence.

5. **PREHEARING MOTIONS:** All prehearing motions shall be served upon the opposing party and filed with the Office of Administrative Hearings, Special Education Division, **at least three business days before the Prehearing Conference**. Prehearing motions may be filed and served by facsimile transmission unless they exceed 35 pages in length in which case other means of delivery shall be used.

6. **CONTINUING COOPERATION:** The parties shall continue to confer and cooperate with each other to (1) facilitate the exchange of evidence, (2) reach stipulations of fact, law and the admissibility of evidence in order to promote the efficient conduct of the hearing, and (3) promote productive settlement discussions.

IT IS SO ORDERED.

Dated: February 20, 2015

/s/
DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings