BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. CASTRO VALLEY UNIFIED SCHOOL DISTRICT,	OAH Case No. 2015010039
CASTRO VALLEY UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2015020202 ORDER FOLLOWING PREHEARING CONFERENCE

On May 29, 2015, a telephonic prehearing conference was held before Administrative Law Judge Joy Redmon, Office of Administrative Hearings. Attorney Mark Zeller appeared on Student's behalf. Attorney Tracy Tibbles appeared on Castro Valley Unified School District's behalf. The PHC was recorded.

Based upon discussion with the parties the following orders are issued:

1. Motion to Change Venue: Prior to the PHC, Student filed a motion to change the hearing venue from Castro Valley's district offices to the Office of Administrative Hearing's Oakland offices. Student alleged that the Castro Valley's officers are not reasonably convenient to Parents because they do not consider it a neutral forum as they have had negative experiences with Castro Valley employees in the past while attempting to obtain services for their son. Castro Valley opposed the motion.

Special education due process hearings involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and the child involved. (34 C.F.R. § 300.515 (d)) Reasonably convenient does not mean the location preferred by the parent. No authority was provided establishing that for special education due process hearings reasonably convenient includes the subjective feelings of the party despite how unpleasant the memories may be. The motion to change venue was denied.

2. Hearing Dates, Times, and Location. The hearing shall take place at **Castro Valley Unified School District's offices located at 4400 Alma Avenue, Castro Valley, CA 94546.** It is scheduled for June 9, 2015, from 9:30 p.m. to 5:00 p.m., June 10, 2015, and June 11, 2015, from 9:00 a.m. to 5:00 p.m. The hearing will continue day-to-day Monday through Thursday as needed and at the discretion of the ALJ. Castro Valley shall ensure that the facility for the hearing 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), 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 provide hearing dates to proposed witnesses, and shall subpoena witnesses if necessary, to ensure their availability. Failing to properly notify or subpoena a witness does not constitute good cause for their unavailability.

3. Issue and Proposed Resolutions. The issues below were discussed at the PHC and reworded for clarity.

Student's Issue:

Issue: Did Castro Valley deny Student a free appropriate public education during the 2013-2014 and 2014-2015 school years by failing to offer and provide appropriate services and supports to address Student's needs arising from his disability of emotional disturbance including:

a. appropriate goals to address emotional disturbance and executive functioning;

b. individual therapy; and

c. establishing a close relationship with a teacher or mentor as treatment to address his emotional needs.

Proposed Resolution: Student seeks an order requiring Castro Valley to reimburse Parents for all costs associated with Student's enrollment in a private school.

Castro Valley's Issue:

Issue: Was Castro Valley's November 19, 2013, IEP, as amended, designed to meet Student's unique needs, reasonably calculated to provide Student educational benefit in the least restrictive environment, and was it properly implemented after parental consent was provided?

Proposed Resolution: Castro Valley seeks an order that it offered and provided Student a FAPE.

4. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall number exhibits in a way that clearly identifies the party offering the exhibit (for example "S-1" for Student or "D-1" for District). All pages of a party's exhibit binder shall be consecutively numbered**.** The exhibits should consist of one document or short series of documents that are related (for example, an individualized education program shall have its own exhibit rather than a single exhibit for all IEP's). Each exhibit binder shall contain a detailed table of contents. At the hearing, each party shall supply an exhibit binder containing its exhibits for the ALJ, and a second exhibit binder for the 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.

Each party is expected to comply with Education Code section 56505, subdivision (e)(7) and timely serve an exhibit binder containing its respective exhibits on the other party. Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not timely exchanged will only be admitted if the ALJ rules that it is admissible.

5. Witnesses.

a) Each party is responsible for procuring their own witnesses; however, the parties shall make witnesses under their control reasonably available to the other party. Witnesses shall be scheduled in a way that avoids delays and minimizes or eliminates having to call a witness twice or out of order.

b) **The parties are ordered to meet and confer to develop a proposed joint witness schedule**. The proposed schedule will be presented to the ALJ at the beginning of the hearing. Prior to commencing the hearing, the ALJ and the parties will discuss the proposed witness schedule and address scheduling issues for individual witnesses, before the schedule is finalized. The ALJ has discretion to limit the number of witnesses and the length of their testimony.

6. Scope of Witness Examination. After the first direct and cross-examinations, each party will be permitted to question the witness on matters raised in the immediately preceding examination. Parties shall be required to establish their cases in chief (conducting both direct and cross) so that each witness only appears once. Student will present his case first followed by Castro Valley.

7. Telephonic Testimony. A party must ask in advance if it intends to present a witness via telephone; if granted, the party shall provide the proposed witness with a complete set of exhibit binders from all parties, 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. Student requested to have witnesses from Costa Rica testify via Skype. Castro Valley did not oppose the request. The request was granted

subject to conditions. Specifically, Student is required to provide all necessary equipment to call witnesses via Skype including software, hardware, and a display device. The display device must be large enough so that the ALJ, attorneys, and parties can simultaneously watch the witness without having to move the room configuration or cause undue burden. If the Skype connection is lost, Student requested and was granted the opportunity to call those witnesses telephonically subject to the requirements set forth above. Castro Valley reserved its right to request telephonic testimony of witnesses if the need arises.

8. Electronic Recording of Hearing.

a. Audio Recording. At present, both parties asked to record the hearing. The request was granted with the following conditions: 1) that OAH's recording is the only official recording; 2) that the recorder will be turned on and off at the same time as the ALJ's recording, to avoid recording conversations while off the record; 3) that the operation of the party's recording mechanism will not be allowed to delay the hearing; and 4) that the recording will not be shared with any individuals outside of the hearing room during the hearing.

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. Motions. No motions are pending or anticipated prior to hearing. Any motion filed after the prehearing conference must be accompanied by a showing of good cause as to why the motion was not made prior to the prehearing conference.

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. Compensatory Education and Reimbursement. Any party seeking expense reimbursement shall present admissible evidence of these expenditures, or a stipulation to the amount, as part of its case in chief. Any party seeking compensatory education shall provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

12. Conduct 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.

13. Special Needs and Accommodations. At present neither party anticipates the need for any special accommodation for any witness or party. 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 a request for reasonable accommodation is available on OAH's website at http://www.dgs.ca.gov/oah/Home/Accommodations.aspx.

14. Hearing Closed To the Public. At Student's request the hearing will be closed to the public.

15. 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 days or fewer than five days 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. IF A FULL AND FINAL SETTLEMENT IS REACHED AFTER 5:00 P.M. THE 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.

Dates for hearing will not be vacated until OAH receives a letter of withdrawal, or those portions of the signed agreement withdrawing the case, with signatures. 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

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

IT IS SO ORDERED.

DATE: June 1, 2015

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings