BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. PASO ROBLES JOINT UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2014020930 ORDER FOLLOWING PREHEARING CONFERENCE

On April 14, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Charles Marson, Office of Administrative Hearings (OAH). There was no appearance on behalf of Student.[1] Diane Beall, Attorney at Law, appeared on behalf of the Paso Robles Joint Unified School District (Paso Robles). The PHC was recorded.

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

1. Hearing Dates, Times, and Location. At the PHC Paso Robles represented that a change in location of the hearing was necessary because the hearing is now scheduled during the period in which the District is on spring break, and that Student had been notified of the new address. **Please note the new hearing location.** The hearing shall take place at 8005 Morro Road, Atascadero, California 93422. It shall take place on April 22 and 23, 2014, and shall continue day-to-day thereafter, Monday through Thursday, at the discretion of the ALJ. On April 22, 2014, the hearing shall begin at 9:30 a.m. and end at 5:00 p.m., and April 23, 2014, the hearing shall begin at 9:00 a.m. and end at 5:00 p.m., unless otherwise ordered.

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. Issue and Proposed Resolution.

[1] The PHC was scheduled for 1:00 p.m.. At that time, and 15 minutes later, the ALJ telephoned Mr. Brad Bailey, advocate for Student, at the telephone number on his pleadings, and received a recorded message both times.

Did Paso Robles fail to offer Student a free appropriate public education for the 2014 extended school year (ESY) because it failed, in its September 24, 2013 and February 11, 2014 individualized education program to offer Student occupational therapy services during the ESY?

As the resolution, Student seeks an order requiring Paso Robles to provide him occupational therapy services during the 2014 ESY consisting of three 25-minute one-on-one direct occupational therapy sessions a week, by a licensed occupational therapist.

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 in a way that makes clear the party offering it (such as "S1" or "D2"). 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. Each party shall serve an exhibit binder containing its respective exhibits on the other party by 5:00 p.m. on April 15, 2014, 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 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.

a) Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available to the other party. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses twice or out of order. Neither party shall be permitted to call any witnesses not disclosed in the party's prehearing conference statement and listed below, except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

b) At present, Student intends to call the following witnesses:

1) Dr. Debra Balke, M.D.;

2) Dr. Randal Ball, Board-Certified Behavior Analyst (BCBA), educational psychologist;

3) Diana Boyles, resource teacher;

4) Jennifer Brannies-Garcia, BCBA,

5) Rebecca D'Ornellas, Central Coast Autism Spectrum Center;

6) Dr. Laurie Ferguson, clinical psychologist;

7) Dr. Laura Herzberg, M.D.,

8) Anita Hoag, consultant;

9) Student's Mother;

10) Marcia Murphy, director of special education;

11) Rebecca Simmons, non-certified Paso Robles staff member;

12) Kathy Villalba, parent of other autistic students;

13) Kris Wendorff, occupational therapist;

14) Cindi Wolfe, former director, Parents Helping Parents;

c) At present, the District intends to call the above witnesses Boyles, Murphy, and Wendorff, and in addition to call Aelada Bythe, teacher.

5. Scope and Order 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. The order in which the parties present their cases in chief shall be subordinate to the need for each witness to appear only once, so the parties shall be required to establish their cases in chief during the first appearance of a witness.

6. Telephonic Testimony. Student's motion to allow Anita Hoag to testify by telephone from Idaho is granted, subject to any later order restricting or eliminating Ms. Hoag's testimony (see No. 8). At present no party intends to present any other witness by telephone. A party seeking to present any witness by telephone shall move in advance for leave to do so; 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. These requirements apply to the proposed testimony of Ms. Hoag.

7. Electronic Recording of Hearing.

a. Audio Recording. Both parties have requested leave to make audio recordings of the hearing. Both parties may make audio recordings on the 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, to avoid recording conversations while off the record; and 3) that operation of the party's recording mechanism will not be allowed to delay 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.

8. Motions. Shortly before the PHC, Paso Robles filed a motion in limine to prevent testimony of some witnesses on Student's witness list, and to limit the testimony of others. Student has until the close of business on April 17, 2014, to file a response to the motion, but is encouraged to file sooner if possible so that the parties may know which witnesses to schedule. The motion will be ruled on at the outset of the hearing, or before if possible. At present no other prehearing motions are pending or contemplated. Any motion filed after this date, not including the above-described motion in limine, shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not made prior to or during this prehearing conference.

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

10. 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.

11. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for the services of an interpreter.

12. Hearing Closed To the Public. At the request of Parents, the hearing will be closed to the public.

13. 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 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.

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

IT IS SO ORDERED.

Dated: April 14, 2014

/s/
CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings