BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of: | |
| PARENT ON BEHALF OF STUDENT, | OAH CASE NO. 2013101004 |
| v. | ORDER FOLLOWING PRE-HEARING CONFERENCE, INCLUDING RULING ON DISTRICT'S MOTION TO DISMISS ISSUES |
| PARAMOUNT UNIFIED SCHOOL DISTRICT. | |

On January 24, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Clifford H Woosley, Office of Administrative Hearings (OAH). Education advocate Kim McClain appeared on behalf of Student. Angela Gordon, Attorney at Law, appeared on behalf of Paramount Unified School District (District). The PHC 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 **February 3, 4, 5, and 6, 2014** at 1:30 PM first day, 9:00 AM other days, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. The hearing shall take place at District's offices, located at **15110 California Ave., Paramount, CA 90723.**

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.

The complaint stated four issues, two of which District moved to dismiss. The District's motion will be addressed in this section, after which the issues for hearing will be identified.

Order Dismissing the Complaint's Issue Three as Having Been Already Adjudicated

District moved for dismissal of the Complaint's Issue Three, which asserted that the District's triennial assessments were not legally appropriate. District requests that judicial notice be taken of the January 10, 2014 Decision issued in OAH matter

no. 2013070575. The ALJ takes judicial notice and finds that the Decision determined the assessments referred to in Issue Three to have been legally appropriate. Accordingly, the Complaint's Issue Three is dismissed in its entirety.

Order Dismissing the Complaint's Issue Four, in part, as Having Been Already Adjudicated

District moved to dismiss Issue Four, which asserted that the District failed to evaluate Student in the area of visual processing and, therefore, denied Student a free appropriate public education (FAPE). District cites the January 10, 2014 Decision, issued in OAH matter no. 2013070575, which found that the District appropriately assessed Student in the area of visual processing in the comprehensive assessments for Student's triennial individualized education program (IEP) team meetings of February and March 2013. However, Student is permitted to assert that, after the 2013 IEP team meetings up to the date of the complaint's filing, the District knew or should have known it was required to further evaluate Student in the area of visual processing. Therefore, Complaint's Issue Four is dismissed only to the extent it seeks to argue a denial of a FAPE prior to the 2013 triennial IEP team meetings.

The remaining issues of the complaint are renumbered and are as follows:

(1) Did District deny Student a FAPE when it failed to adopt the goals set forth in the Autism Behavior Services assessment, presented at the February 6, 2013 IEP team meeting?

(2) Within two years before the filing of the complaint, did the District deny Student a FAPE by failing to provide a qualified aide to support Student through the day?

(3) Since the Student's triennial IEP team meetings of February and March 2013, has the District denied Student a FAPE by not evaluating Student in all areas of suspected disability when it did not further assess Student in the area of visual processing?

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. 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 acknowledged that they are to serve their evidence binders on each other by **January 27, 2014**, in order to comply with Education Code section 56505, subdivision (e)(7). The parties may not serve exhibits on OAH prior to the hearing. In the event of duplicate exhibits, the ALJ shall use the most legible version.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not included in the exhibit lists and not previously timely 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. Both parties timely submitted a list of witnesses for hearing.

Order Limiting Testimony of Witness Ms. Rita

District moved to exclude the testimony of the listed witness, Ms. Rita, because she did not start working as Student's aide until after the complaint's October 28, 2013 filing. The motion is granted, to the extent that Ms. Rita cannot testify regarding Student's need for aide support, and facts related thereto, prior to the complaint's filing. Ms. Rita may testify as to Student's aide support, but such testimony would be submitted for the sole purpose of assisting the ALJ in fashioning a remedy, if necessary, not in determining whether Student was receiving a FAPE prior to the date the complaint was filed.

Order For District to Produce Former Employees' Addresses and Phone Numbers

District stated that Student listed two witnesses in her PHC Statement, Alfredo Mayen and Shannon Patterson, who are no longer District employees. District is therefore not required to produce the witnesses for hearing. District is ordered, however, to provide Student's advocate with the witnesses' last known addresses and phone numbers, by close of business, Monday, January 27, 2013, so that Student may subpoena the 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 **January 31, 2014**, for purposes of preparing a schedule of witnesses to be presented to the ALJ on the first day of hearing. 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. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

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. If a witness is to be called by more than one party, the parties need be prepared to examine the witness when first called. Except on a motion and good cause shown, a witness will appear and testify once.

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 stated that he may need to request that some witnesses testify telephonically; however, Student's advocate was not prepared to make the motion at the PHC. Accordingly, if necessary, Student will present a motion for telephonic testimony on the first day 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, which is **January 27, 2014**, herein.

8. Order of Presentation of Evidence. Student is the petitioner, bears the burden of proof, and will first present evidence as to his issues, to be followed by District's presentation of evidence.

9. Motions. Other than the motions ruled upon herein, and Student's possible motion for telephonic testimony on the hearing's first day, no prehearing motions are pending or contemplated. Any other prehearing motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not made prior to or during the prehearing conference of **January 24, 2014**.

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, advocates, all parties, and all witnesses shall conduct themselves in a professional and courteous manner at all times. Cellular phones, pagers, and other electronic devices shall be shut off or set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ. No party may record the proceedings unless the ALJ grants permission to do so.

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.

14. Hearing Open To the Public. At Student's request, the hearing shall be open 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.

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

IT IS SO ORDERED.

Dated: January 24, 2014

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings