BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>SANTA MARIA-BONITA SCHOOL DISTRICT AND SANTA MARIA JOINT UNION HIGH SCHOOL DISTRICT. | OAH Case No. 2018071095<br><br>ORDER FOLLOWING PREHEARING CONFERENCE |

On October 26, 2018, a telephonic prehearing conference was held before Administrative Law Judge Chris Butchko, Office of Administrative Hearings. Daniel Shaw, Attorney at Law, appeared on behalf of Student. Matthew P. Juhl-Darlington, Attorney at Law, and Amanda Johnson, Attorney at Law, appeared on behalf of Santa Maria-Bonita School District and Santa Maria Joint Union High School District. The PHC was recorded.

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

1. District's Motions to Quash Subpoena. On October 23, 2018, each District filed a motion to quash subpoenas directed to its Custodian of Records. Student filed an opposition to the motion by Santa Maria-Bonita on October 25, 2018.

On October 26, 2018, Student withdrew the subpoena to the High School District because of typographical errors in the subpoena and issued a new subpoena. Student represented that there were no substantive changes to the subpoena to the High School District. Counsel stated at the PHC that the High School District therefor wished to renew its motion to quash and requested leave to do so without refiling. There being no opposition to the request, leave was granted. Student was directed to file in opposition as soon as possible, and in no event later than close of business Tuesday, October 30, 2018. The ALJ informed the parties that a further order ruling on both motions would issue following receipt of that opposition.

2. Hearing Dates, Times, and Location. The hearing shall take place on November 6-8, 13-14, and 27-29, 2018 and continue day to day at the discretion of the ALJ. The hearing shall take place at Santa Maria Joint Union High School District's offices located at 2560 Skyway Drive, Santa Maria, California 94355. The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 a.m. all other days, unless otherwise ordered.

As ordered in the scheduling order, the named local educational agency was to provide a facility for the hearing that 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 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities. The named local educational agency failed to certify that it would provide a facility for this case that complied with the law. The local educational agency shall file a statement certifying that it will provide a facility that complies with the law by November 1, 2018.

Prior to the beginning of the hearing, the High School District shall assist the ALJ to ensure that the hearing room is configured into a courtroom setting, including (1) a table for Student and his representatives; (2) a table for both district's legal representatives and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. The High School District shall also make reasonable effort to ensure that drinking water and tissue are available to all parties, witnesses and the ALJ.

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. Student need not reissue his subpoenas to reflect the change in hearing location from that set forth in the Scheduling Order.

3. Issues and Proposed Resolutions. The issues at the due process hearing, and the proposed resolutions, are listed below. Each district responded to Student's Amended Due Process Complaint on August 3, 2018.

1. Did Santa Maria-Bonita deny Student a free appropriate public education during the 2016-2017 school year, including extended school year, by:

a. failing to assess Student in all areas of suspected disability, including behavior, cognition, social skills, language pragmatics, and specific learning disability;
b. failing to implement Student's individualized educational programs of August 29, 2016, October 25, 2016, and March 30, 2017 by failing to provide required speech and language services;
c. failing to offer measurable goals in the IEPs of August 29, 2016, October 25, 2016, and March 30, 2017;
d. failing to make a clear offer of FAPE in the IEPs of August 29, 2016, October 25, 2016, and March 30, 2017;
e. failing to provide appropriate speech and language services;
f. failing to offer or provide appropriate academic instruction in the IEPs of August 29, 2016, October 25, 2016, and March 30, 2017;
g. failing to offer or provide appropriate behavior supports in the IEPs of August 29, 2016, October 25, 2016, and March 30, 2017; and

h. failing to offer or provide an appropriate behavior support plan in the IEPs of August 29, 2016, October 25, 2016, and March 30, 2017?

2. Did the High School District deny Student a free appropriate public education during the 2017-2018 school year, including extended school year, through the 2018-2019 school year, by:

a. failing to assess student in all areas of suspected disability, including behavior, cognition, social skills, language pragmatics, and specific learning disability;
b. failing to implement Student's August 22, 2017 IEP by failing to provide a behavior support plan;
c. failing to offer measurable goals in all areas of need in the August 22, 2017 IEP;
d. failing to make a clear offer of FAPE in the August 22, 2017 IEP;
e. failing to offer or provide appropriate academic instruction in the August 22, 2017 IEP;
f. failing to offer or provide appropriate behavior supports in the August 22, 2017 IEP; and
g. failing to offer or provide an appropriate behavior support plan in the August 22, 2017 IEP?

As proposed resolutions, Student requests that both districts be directed to fund independent educational evaluations of Student in psychoeducational functioning, social skills, and functional behavior and that the districts be directed to conduct staff training on assessment of students. In addition, Student seeks an award of compensatory education.

4. 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 letters "S," "SMB," or "HSD" in front of the exhibit to designate if it is a Student or district exhibit (for example, "S-5", "SMB-100", "HSD-200"). 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 shall serve their evidence binders on each other 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.

5. 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 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 are directed to meet and confer by close of business on Tuesday, October 30, 2018, to coordinate the availability and order of testimony of witnesses 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 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 prepare and present to the ALJ a written schedule for each day of hearing at the start of each day's proceedings. The districts shall have witnesses available if agreement on a witness list is not reached among the parties.

6. Scope of Witness Examination. Each witness shall be called to testify only once, except for rebuttal purposes, and all parties shall examine the witness on all issues when the witness is first called. 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.

7. 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 every 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. No witnesses are currently expected to need to testify telephonically, although each party reserved the right to seek to provide telephonic testimony if a witness's needs made it necessary.

8. Electronic Recording of Hearing.

a. Audio Recording. Student's motion to make an audio recording of the hearing is granted, subject to the following 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. Permission is granted to both districts to record the hearing subject to the above-listed conditions.

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. Order of Presentation of Evidence. In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) Here, Student is the petitioning party. Accordingly, Student shall present his case-in-chief, followed by Santa Maria-Bonita and the High School District.

10. Motions. No further pretrial motions are pending or contemplated. Any motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not made prior to or during the prehearing conference.

11. 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.

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

13. 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.

14. Special Needs and Accommodations. Student will require Spanish-language interpretation during the hearing, which will be provided by OAH. No other accommodations are expected to be necessary at hearing. A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar staff, identified in the scheduling order, at (916) 263-0880, as soon as the need is known. Additional information concerning requests for reasonable accommodation is available on OAH's website at https://www.dgs.ca.gov/oah/Home/Accessibility.aspx.

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

16. 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 EMAIL THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO OAH AT https://www.applications.dgsapps.dgs.ca.gov/oah/oahsftweb .

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.

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

IT IS SO ORDERED.

DATE: October 26, 2018

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Chris Butchko
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CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings