BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENTS ON BEHALF OF STUDENT,	OAH CASE NO. 2013110547
v.	ORDER FOLLOWING PRE-HEARING CONFERENCE OF FEBRUARY 10, 2014
IRVINE UNIFIED SCHOOL DISTRICT.	

On February 10, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Darrell Lepkowsky, Office of Administrative Hearings (OAH). Brian R. Sciacca, Attorney at Law, appeared on behalf of Student. Tracy Petznick Johnson, Attorney at Law, appeared on behalf of the Irvine Unified School District. The ALJ recorded the PHC.

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 25 through 27, and March 4 and 5, 2014, and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin at 9:30 a.m. on February 25, 2014, and at 9:00 a.m. each other day, unless otherwise ordered. The hearing shall be held at the District's **Westwood Training Center located at 1 Liberty Way, Irvine, California 92620.**

The District shall ensure that the hearing room is configured into a courtroom setting and shall have at a minimum 1) a table for Parents and their representatives if appropriate; 2) a table for the District's legal representative and the District's representative; 3) a table for the witness; and 4) a table for the ALJ, near an electrical outlet. The District shall provide drinking water to all parties, witnesses and the ALJ. The water does not have to be bottled. The same hearing room shall be used for each day of hearing and shall be available at least one hour prior to the commencement of the hearing each day. The hearing room shall be locked following the hearing each night if the hearing has not concluded.

The District shall also ensure that a separate and private room is available near the hearing room, for Parents and their representatives during recesses and breaks

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 for Hearing. The issues at the due process hearing are listed below.

a) Did the District procedurally deny Student a free appropriate public education (FAPE) during the 2011-2012 school year, starting on January 27, 2012, by:

i. Failing to include a general education teacher as part of his initial individualized education program (IEP) team meeting;

ii. Predetermining the placement and services offered to Student; and

iii. Failing to discuss and consider the continuum of placement and services options available?

b) Did the District substantively deny Student a FAPE during the 2011-2012 school year, starting on January 27, 2012, by failing to:

i. Provide adequate services in the areas of behavior;

ii. Provide adequate services in the areas of speech and language;

iii. Provide adequate services in the areas of Physical Therapy;

iv. Provide adequate services in the areas of occupational therapy;

v. Provide him placement in the least restrictive environment; and

vi. Offer extended school year programming?

c) Did the District deny Student a FAPE by failing to properly respond to Parents' requests for independent educational evaluations?

d) Did the District procedurally deny Student a FAPE in the 2012-2013 school year and extended school year, and in the 2013-2014 school year by:

i. Retaliating against Parents for asserting Student's rights as a child with a disability by refusing to offer Student a preschool placement at his January and February 2013 IEP meetings;

ii. Failing to consider input from parents and failing to consider the results of independent educational evaluations obtained by Parents; and

iii. Failing to include input from a general education teacher regarding placement and services?

e) Did the District substantively deny Student a FAPE in the 2012-2013 school year and extended school year, and in the 2013-2014 school year by failing to:

i. Utilize appropriate behavior strategies to address toileting issues at Student's Head Start placement;

ii. Provide appropriate supports and services in the general education environment to allow Student to safely participate in the program at all times;

iii. Provide adequate speech and language services;

iv. Provide adequate occupational therapy services; and

v. Provide adequate physical therapy services?

f) Did the District deny Student a FAPE by failing to offer any educational placement from February 2013 to the present?

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. The parties represent that they have served 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 good cause is shown and the ALJ rules that it is admissible.

4. 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, and at the discretion of the ALJ.

The District is ordered to inform counsel for Student of the names of any witness listed by Student who is no longer a District employee, by no later than 9:00 a.m. on February 14, 2014.

The parties are ordered to meet and confer by February 20, 2014, as to the schedule of witnesses. At the start of the first day of hearing, the parties shall provide the ALJ with a written list of all witnesses scheduled to testify, indicating the date and time of their anticipated appearance.

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 reminded that the hearing has been scheduled for five days and should plan which witnesses to call with this time frame in mind.

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. Unless otherwise ordered, only one round of re-direct and/or re-cross examination shall be permitted.

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.

At this time, neither party anticipates moving for telephonic testimony.

7. Motions. The District may make a motion to dismiss allegations in Student's complaint that have already been addressed by the California Department of Education pursuant to compliance complaints. The District must file its motion no later than 9:00 a.m. on February 14, 2014, 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 of February 10, 2014. Any other motion filed by either party shall be accompanied by a similar declaration.

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

9. 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.

10. 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.

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

12. Hearing Closed To the Public. At the request of Parents, the hearing will be closed to the public. If Parents decide they prefer the hearing to be opened, Student shall file notification of that fact with OAH no later than five business days prior to the first day of the hearing.

13. 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.

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

IT IS SO ORDERED.

DATE: February 10, 2014

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings