BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013100554
v.	ORDER FOLLOWING PRE-HEARING CONFERENCE, INCLUDING ORDER DENYING DISTRICT'S MOTION TO CONSOLIDATE
SOUTH PASADENA UNIFIED SCHOOL DISTRICT.	

On February 3, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Clifford H. Woosley, Office of Administrative Hearings (OAH). Mark Woodsmall, Attorney at Law, appeared on behalf of Student (Student). Attorney Geneva L. Englebrecht, of Atkinson, Andelson, Loya, Ruud & Romo, appeared on behalf of South Pasadena Unified School District (District). The PHC was recorded.

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

1. Order Denying District's Motion to Consolidate

On January 30, 2014, District filed a request for due process (OAH Case No. 2014020020) against Student (District's complaint). District also concurrently filed a motion to consolidate District's complaint with the Student's complaint herein, and to continue the hearing. Student filed an opposition to the Motion on February 3, 2014. Both parties were notified to be prepared to argue the Motion at the PHC, which they did.

Student's complaint was filed in October 2013 and one continuance has previously been granted. The recently filed District's complaint did not raise any new issues. Rather, District's Complaint only raised issues of which District was aware, or should have been aware, months ago. Further, Student persuasively argued that further delay in hearing would prejudice Student.

Therefore, District's Motion to consolidate and continue is denied.

2. Hearing Dates, Times, and Location

The hearing shall take place on **February 10, 11, 12, and 13, 2014** at 1:30 PM first day, 9:30 AM other days, and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ. The hearing shall take place at District's offices, located at **1020 El Centro Street, South Pasadena, CA 91030.**

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.

3. Issues. The issues to be heard at the due process hearing are listed below.

(1) Did District deny Student a free appropriate public education (FAPE) by failing to adequately assess him in the areas of speech and language and/or assistive technology/augmentative alternative communication (AT/AAC), within the two years prior to the complaint's filing?

(2) Did District deny Student a FAPE for the 2012-2013 school year, by:

(a) offering an educational placement that was not reasonably calculated to provide Student a FAPE;

(b) not providing Student with the services described in his individualized education program (IEP) documents; and/or

(c) not providing Student with research-based interventions?

(3) Did District fail to offer Student a FAPE for the 2013-2014 school year, by:

(a) offering an educational placement that was not reasonably calculated to provide Student a FAPE; and/or

(b) not providing Student with research-based interventions?

(4) Did District commit procedural errors, which caused a denial of FAPE to Student, by:

(a) failing to accurately state Student's present levels of performance (PLOP's) and to craft appropriate and measurable annual goals at his IEP team meetings and in his IEP documents for the 2012-2013 and 2013-2014 school years;

(b) predetermining its offer of placement at the IEP team meetings for the 2013-2014 school year;

(c) failing to consider the findings of Student's private experts at the IEP team meetings for the 2012-2013 and 2013-2014 school years;

(d) impeding Parents right to participate in the IEP process; and/or

(e) not providing prior written notice to Parents?

Order Requiring Student to Specify Areas of Expected Prior Written Notice

As to Issue (5)(e) , Student is ordered to specify, at the commencement of hearing, those matters for which he claims District failed to provide prior written notice.

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 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 **February 3, 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.

5 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 **February 7, 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.

6. 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 must be prepared to examine the witness on all matters when first called. Except on a motion and good cause shown, or for purposes of rebuttal , a witness will appear and testify 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 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 allows the witness to hear objections and rulings. The witness shall testify from a private room, using a land-line telephone. No unidentified individual may be present in the private room with the witness during testimony. No witness will be heard by telephone unless all these requirements have been fulfilled.

Student's motion to allow Dr. Margaret Bauman to testify telephonically is granted. Student shall provide Dr. Bauman with a complete exhibit binder from each party, containing all of each party's exhibits, prior to the hearing. District shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness during telephonic testimony.

8. 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 **February 3, 2014**, herein.

9. 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.

10. Motions. No other 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 PHC of **February 3, 2014**.

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

12. 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.

13. 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.

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

15. Hearing 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 FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO 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.

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

IT IS SO ORDERED.

Dated: February 03, 2014

/s/
CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings