BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018041136
v.	ORDER FOLLOWING PREHEARING CONFERENCE AND DENYING STUDENT'S MOTION IN LIMINE
PITTSBURG UNIFIED SCHOOL DISTRICT.	

On June 11, 2018, a telephonic prehearing conference was held before Administrative Law Judge Tiffany Gilmartin, Office of Administrative Hearings. Joshua Cruz, Attorney at Law, appeared on behalf of Student. Alejandra Leon, Attorney at Law, appeared on behalf of Pittsburg Unified School District. The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on June 19, 2018, and June 26- 28, 2018, and continuing day to day at the discretion of the ALJ. The hearing shall take place at Pittsburg's offices located at 2000 Railroad Avenue, Pittsburg, California, 94565. 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, Pittsburg shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 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. Pittsburg certified that the facilities used for this case comply with the law. Pittsburg shall inform OAH within two days of the date of this order if it is unable to comply with this order.

Prior to the beginning of the hearing, Pittsburg shall ensure that the hearing room is configured into a courtroom setting and shall have at a minimum (1) a table for Student and his representatives; (2) a table for Pittsburg's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. Pittsburg shall provide drinking water and tissue to all parties, witnesses and the ALJ. 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

and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet.

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 and Proposed Resolutions. The issues at the due process hearing, and the proposed resolutions, are listed below.

1. Did Pittsburg deny Student a free appropriate public education by failing to provide assessments in all areas of suspected disability, specifically, academic-related support and an individual health assessment, to sufficiently address her disability-related needs since April 25, 2016?

2. Did Pittsburg deny Student a FAPE by failing to offer and provide an appropriate educational program designed to meet Student's unique and individual needs from April 25, 2016, until the present?

3. Did Pittsburg deny Student a FAPE by failing to provide a program in the least restrictive environment from April 25, 2016, until the present?

4. Did Pittsburg deny Student a FAPE by failing to provide Student's complete student records, as requested on March 8, 2018, thereby violating her procedural rights?

5. Did Pittsburg deny Student a FAPE by failing to address her lack of achievement toward her IEP goals and objectives from April 25, 2016, until the present?

6. Did Pittsburg deny Student a FAPE by failing to provide prior written notice regarding Pittsburg's decision to terminate occupational therapy consultations and one-to-one paraprofessional services?

7. Did Pittsburg deny Student a FAPE by violating Student's procedural rights by failing to include appropriate individualized education program team members at the September 9, 2017 IEP team meeting?

As resolution, Student proposes:

A. Pittsburg shall fund and/or provide private or independent educational assessments, with the evaluator(s) selected by Student's foster parents, in areas including, but not limited to, a comprehensive neuro-psychoeducational assessment, academics, social-emotional, behavioral, occupational therapy, adaptive physical education, physical therapy, assistive technology, health-nurse services, and speech and language.

B. Pittsburg shall provide compensatory education in all areas of need including, but not limited to, intensive one-on-one academic instruction and/or educational therapy; behavioral support; extended school year services; social skills; occupational therapy services; at-home tutoring; counseling services; and reimbursement for education and related services.

C. Pittsburg shall produce all of Student's school records, including: any and all IEP related-documents, any and all assessment reports, yearly grades, progress reports, any and all documents from STAR/Haynes, complete attendance records, testing protocols, service logs, reflection reports, videos, audio recordings and any and all other records that are directly related to Student's IEP services, assessments, educational needs or performance that are maintained by Pittsburg or by any person or agency acting on behalf of Pittsburg.

D. Pittsburg shall provide a trained and qualified paraprofessional or nurse's aide with skills and experience working with children with disabilities such as Student's, to assist and provide one-to-one academic and behavioral support for Student in the classroom.

E. Pittsburg shall reimburse foster parents for transportation expenses to and from school, occupational therapy visits, and/or other IEP services according to proof.

F. Pittsburg shall provide third-party training to special education administrators, teachers, and other relevant special education staff regarding the requirements of the Individuals with Disabilities Education Act.

G. Pittsburg shall fund attorney fees and all other costs incurred through the filing of this complaint pursuant to 20 U.S.C. §1415(h)(3)(B).

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 Pittsburg 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 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 timely exchanged shall not be admitted into evidence at the hearing unless 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 timely disclosed except for good cause shown, 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 shall attempt to reach agreement on a witness list for the first day of hearing. Pittsburg shall have witnesses available in case agreement on a witness list is not reached. Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for direct and cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. Additionally, 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.

5. 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.

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. 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.

Pittsburg's motion to allow Dr. Pamela Mills to testify telephonically is granted. Pittsburg shall provide Dr. Mills with a complete exhibit binder from each party, 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.

7. Electronic Recording of Hearing.

a. Audio Recording. Both parties are granted permission to make an audio recording of the hearing 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, in order to avoid recording conversations while off the record; 3) the

recording device will be removed by the party recording during any recess where the party leaves the room; 4) the operation of the party's recording device will not be allowed to delay the hearing; and 5) a private recording is not allowed to be used to prepare the testimony of an upcoming witness in 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. 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 bears the burden of proof and shall present her case-in-chief, followed by Pittsburg.

9. Motions. On June 8, 2018, Student filed a motion *in limine* seeking to limit Pittsburg's defense to school records produced as a result of Student's March 8, 2018 education records request. Both parties had an opportunity to be heard on the issue. The motion was denied as Student failed to demonstrate good cause for why the motion was not timely filed three business days prior to the prehearing conference as directed in the scheduling order. No other 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 three business days prior to the prehearing conference.

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. 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, 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.

13. Special Needs and Accommodations. 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.

14. Hearing Closed To the Public. At the request of Student, the hearing will be closed 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 EMAIL THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT https://www.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.

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

IT IS SO ORDERED.

DATE: June 12, 2018

DocuSigned by:
Tiffany Gilmartin
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TIFFANY GILMARTIN
Administrative Law Judge
Office of Administrative Hearings