BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. TAHOE TRUCKEE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018100935 ORDER FOLLOWING PREHEARING CONFERENCE

On November 30, 2018, a telephonic prehearing conference was held before Administrative Law Judge Cynthia Fritz, Office of Administrative Hearings. Marcella L. Gutierrez, Attorney at Law, appeared on behalf of Tahoe Truckee Unified School District. Mother and Father appeared on behalf of Student. Alfonso Padron, advocate, was present. Spanish interpreter, Chara Vela, participated for interpreter services only. 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 December 12 and 13, 2018, continuing day to day, at the discretion of the ALJ.** 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.[1] The hearing shall take place at Tahoe Truckee's offices located at 11603 Donner Pass Road, Truckee, California, 96161.[2]

As ordered in the scheduling order, Tahoe Truckee 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

[1] The ALJ reconsidered the hearing dates and set the hearing for two days only. The remainder of the hearing days will be determined either at the time of hearing or if the parties agree to the December 11, 2018, date.

[2] The parties discussed the possibility of starting the hearing on December 11, 2018, but needed to confirm with others on availability. The ALJ ordered the parties to meet and confer by December 5, 2018, regarding this issue. If all parties agree to a hearing start date on December 11, 2018, a request needs to be filed the same day with OAH, and is contingent upon interpreter availability.

persons with disabilities. **Tahoe Truckee shall file the required certification by December 5, 2018.**

Prior to the beginning of the hearing, Tahoe Truckee 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 Tahoe Truckee's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. Tahoe Truckee 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 locked following the hearing each night. Tahoe Truckee shall ensure that the hearing room and access to it are in compliance with the Americans with Disabilities Act.

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 and proposed resolutions as stated by District are listed below.

Issues[3]

1. Did Tahoe-Truckee Unified School District deny Student a free and appropriate public education during the 2018-2019 school year by:

a. failing to provide prior written notice of change of enrollment and placement;

b. failing to have an IEP in effect for Student at the beginning of the school year, from September 11, 2018 through October 15, 2018; and

c. failing to allow Parents the opportunity to fully participate in the decision making process regarding the identification, provision, and placement of Student for the 2018 interim IEP.

2. Did Tahoe-Truckee Unified School District deny Student a free and appropriate public education during the 2018-2019 by failing to provide an adequate interim IEP, placement, and appropriate services by:

[3] Student's issue listed in his prehearing conference statement as A(a) was dismissed as outside OAH's jurisdiction. Student's issues listed in his prehearing conference statement as (C)(a), (C)(b), and (C)(c), were dismissed as outside OAH's jurisdiction.

a. copying and pasting portions of the Washoe-Nevada IEP onto the Tahoe-Truckee California IEP during August 2018, disregarding California law;

b. failing to develop accurate present levels of academic achievement and functional performance in the area of deafness and hard of hearing, comparable to that of his last consented to IEP;

c. failed to offer specialized academic instruction;

d. failed to offer speech and language services; and

e. failed to offer support in American Sign Language.[4]

Resolutions

1. OAH ALJ order that Student should be reenrolled in Hidden Valley Elementary in Nevada or a similar program that has services for deaf and hard of hearing, and related services according to Student's needs and circumstances, including cochlear implant and audiology services, at a location Parents can access at Tahoe-Truckee's expense.[5]

2. Compensatory education for such services described as deaf and hard of hearing and related services lost since September 11, 2018, to the present.

3. Payment for transportation that is due and not fully paid during the previous school years which was an accommodation in the IEP.

4. Any other remedy consistent and commensurate with Student's needs in accord with his disability of severe deafness.

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"). All of a party's exhibits shall be Bates-stamped with numbers running consecutively through the binder. 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,

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[4] The issues have been rephrased for clarity. If the clarification does not adequately identify the issues, the parties should expeditiously submit notice of such in writing.

[5] Tahoe-Truckee objected to the resolution requesting the ALJ to enroll Student at Hidden Valley Elementary in Nevada as outside OAH's jurisdiction. The request was denied because it was Student's proposed resolution and not an issue in this case. If Student prevails, the ALJ will determine remedies at that time.

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.

Parties are encouraged to present resumes or curriculum vitae for each professional witness.

Tahoe Truckee shall include a color copy of the school calendar for each school year in question and shall have witnesses available to testify as to any legend notations that might be unique to Tahoe Truckee.

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, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

Any witnesses that are not relevant or cumulative will not be allowed to testify at the hearing at the discretion of the ALJ. The parties shall attempt to reach agreement on a witness list for the first day of hearing. The District 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. Meet and Confer

The parties are encouraged to review and shorten their witness lists and lists of exhibits 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 ordered to meet and confer by December 5, 2018, at 5:00 p.m., in order to discuss the order of witnesses and the length of witness testimony and be prepared to present the ALJ with any stipulations and a written joint witness list with time estimates and dates of expected testimony on the first day of hearing.**

Should agreement on a list not be reached, each party shall prepare separate lists and Student shall have witnesses available so the hearing can proceed promptly. 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.

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.

7. 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 and bears the burden of proof. Accordingly, Student shall present its case-in-chief, followed by Tahoe Truckee.

8. 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. No party requested telephonic testimony.

Electronic Recording of Hearing.

a. Audio Recording. Tahoe Truckee's motion to make an audio recording of the hearing is granted subject to the following conditions: 1) 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; and 4) that operation of the party's recording mechanism will not be allowed to delay 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.

10. IEP Recordings. Student's request to introduce IEP recordings was granted. The parties will discuss IEP recording authentication issues at the time of the meet and confer.

11. Motions. Tahoe Truckee anticipates filing a motion for official notice of OAH case number 2018020394. Student also anticipates filing motions but needs to consult with her advocate. Any motions that are not filed three business days prior to the prehearing conference, shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not timely filed.

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. A Spanish interpreter was requested by Mother for the entirety of the hearing.

A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the mediation or 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. If there is an issue with accommodations at the time of the hearing, a party can bring up the matter with the ALJ at hearing on the record.

15. Hearing Open to the Public. At the request of Student, the hearing will be open 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 THE OAH AT** https://www.dgsapps.dgs.ca.gov/oah/oahsftweb **.**

Dates for hearing will not be cancelled until the letter of withdrawal has been received by OAH. If an agreement is contingent on school board approval, the dates will not be vacated unless a letter requesting a status conference and the signature pages of the executed settlement agreement are submitted. 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: December 3, 2018

DocuSigned by:
Cynthia Fritz
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CYNTHIA FRITZ
Administrative Law Judge
Office of Administrative Hearings