BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ROSEDALE UNION ELEMENTARY SCHOOL DISTRICT.	OAH Case No. 2015090094 ORDER FOLLOWING PREHEARING CONFERENCE

On November 9, 2015, Administrative Law Judge Adrienne L. Krikorian, Office of Administrative Hearings held a telephonic prehearing conference. Attorney Diane Weissburg appeared on Student's behalf. Attorneys Stacy Inman and Kyle Holmes appeared on behalf of Rosedale Union Elementary 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 November 16, 2015 at 1:30 p.m., November 17, 18, and 19, 2015 unless otherwise ordered, and continuing day to day, Monday through Thursday, at the discretion of the ALJ. The first day of hearing shall begin at 1:30 p.m. and all other hearing days at 9:00 a.m., unless otherwise ordered. **The assigned hearing judge will be ALJ Judith Pasewark.**

Only the first day of hearing shall take place at the Office of Administrative Hearings, 15350 Sherman Way, Suite 300, Van Nuys, California to accommodate a witness, pursuant to paragraph12 of this Order. If the witness referred to in Paragraph 12 is not available on November 16, 2015, then all hearing days shall take place at the District's offices located at 2553 Old Farm Road, Bakersfield, California 93312, subject to the parties' agreement with the hearing officer as to the date and time when the witness referred to in paragraph 12 shall be called to testify in Van Nuys.

For all hearing days, except when held at OAH's office, District shall 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 has not yet certified that it would provide a facility for this case that complies with the law. The local educational agency shall inform OAH within two days of the date of this order it is able to certify that it will provide a facility that complies with the law.

Prior to the beginning of the hearing, District shall assist the ALJ to ensure that the hearing room at District's location is configured into a courtroom setting, including (1) a table for Student and his representatives; (2) a table for District's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. 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.

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

Issue One: Did District deny Student a free appropriate public education because it failed to offer or provide vision therapy for the 2015-2016 school year?

Issue Two: Did District deny Parent the opportunity to meaningfully participate in the development of Student's 2015-2016 individualized education program by failing to address Parent's concerns regarding Student's need for vision therapy?

Proposed Resolution: Student seeks an order compelling District to provide vision therapy through Student's private provider.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. Except as permitted in this Order or otherwise ordered by the ALJ, 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 shall consist of one document; separate documents may not be combined into one exhibit. 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.

Both parties have represented that they exchanged exhibits in compliance with Education Code section 56505, subd. (e)(7). Notwithstanding section 56505, subd., (e)(7), District shall include as part of its exhibits the school calendar(s) for the years at issue and shall provide a copy to Student's counsel before the first day of hearing. The parties shall not serve exhibits on OAH prior to the first day of hearing.

If the parties intend to rely on individualized education programs, the parties shall attach all pages of the IEP(s), including copies of all actual signatures on the IEP(s) and any typewritten or handwritten notes or comments, if any, written on the IEP(s).

The parties shall meet and confer by 5:00 p.m. on November 11, 2015, to discuss exhibits and eliminate duplicate exhibits from the exhibit binders. The parties are not required to renumber exhibits or pages if exhibits are removed from their binders. The parties shall exchange resumes for each witness who is expected to testify as to their professional credentials. Notwithstanding the requirements of Education Code section 56505, subd. (e)(7), the parties shall exchange resumes and curriculum vitae at least 24 hours before the witness is scheduled to be called, unless the parties agree otherwise.

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.

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.

The parties are ordered to meet and confer by 5:00 p.m. on November 11, 2015, as to the schedule of witnesses, subject to the provisions of paragraph 12 of this Order. On the first day of hearing, the parties shall provide the ALJ with a detailed schedule which shall include an estimate of time for each side's direct and cross examination. Each witness will only be called once to testify, except for rebuttal purposes, and both parties shall examine the witness on all issues when the witness is first called. The District shall have witnesses available in case agreement on a witness list is not reached. 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 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.

Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

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, 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.

Student's motion to allow Dr. Takeshita, O.D., to testify telephonically is denied without prejudice to Student's right to raise it again on the first day of hearing subject to Paragraph 12 of this Order.

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. Accordingly, Student shall present its case-in-chief, followed by District, subject to paragraph 5 of this Order.

8. Motions. No 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 of November 11, 2015.

9. 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.

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

11. 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.

12. Special Needs and Accommodations. Student's expert, Dr. Bill Takeshita, O.D., requires reasonable accommodations because he is blind. Dr. Takeshita cannot drive, and utilizes audio reading equipment for documents. Student requested telephonic testimony, to which Districted objected.

After discussion with the parties, the following accommodations shall be made to ensure that Dr. Takeshita can participate in the hearing on Student's behalf.

a) Dr. Takeshita's testimony shall be taken at the Office of Administrative Hearings, 15350 Sherman Way, Suite 300, Van Nuys, California 91406. The date and time of his testimony is tentatively set for Monday, November 16, 2015 at 1:30 p.m. If Dr. Takeshita is not available on that date, the parties shall meet and confer in collaboration with the hearing officer on the first day of hearing, at the location identified in paragraph 1 of this Order, to determine a new date and time for the witness' testimony.

b) Student's counsel shall contact Dr. Takeshita before November 11, 2015, and inquire as to what accommodations OAH must make to ensure that the witness can utilize his own audio reading equipment to give him access to all of the documents from both witness binders. Student's counsel shall notify OAH no later than November 12, 2015 of the required accommodations. Accommodations might include an additional table or access to electrical outlets. Student shall ensure that Dr. Takeshita's audio reading equipment has sufficient volume and clarity to be captured by the hearing officer's recording equipment.

c) Student's counsel represented on the record that she has provided Dr. Takeshita with an electronic copy of the complete exhibit binder from each party, containing all of each party's exhibits, prior to the hearing. Counsel for the parties shall meet and confer by close of business on November 11, 2015, to reasonably identify those portions of other documents they anticipate they will use with Dr. Takeshita to allow him time to review those documents in preparation for his testimony.

Notwithstanding the above, any party or other 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: http://www.dgs.ca.gov/oah/Home/Accommodations.aspx

13. Hearing Closed To the Public. The hearing will be closed to the public unless Student requests it be open.

14. 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.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement as noted above, the parties shall submit a request for a status conference and provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

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

IT IS SO ORDERED.

DATE: November 09, 2015

/s/
ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings