BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. PASADENA UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2015070748 ORDER FOLLOWING PREHEARING CONFERENCE

On September 4, 2015, a telephonic prehearing conference was held before Administrative Law Judge Cole Dalton, Office of Administrative Hearings. Alexis Casillas and Sophia Bliziotis, Attorneys at Law, appeared on behalf of Student. Meredith Reynolds, Attorney at Law, appeared on behalf of Pasadena Unified School District. The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on September 15, 2015 at 9:30 a.m., September 16 and 17, 2015 at 9:00 a.m., September 21, 2015 at 1:30 p.m., September 22, 23, and 24, 2015 at 9:00 a.m., unless otherwise ordered, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

The hearing shall take place at District facilities located at 2046 North Allen Avenue, Altadena, CA 91001. 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), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.

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 are listed below.

1) Did District deny Student a free appropriate public education from the 2013 – 2014 school year, through the 2014 – 2015 school year (until July 2, 2015), by failing to:

a) Perform its child find duty to assess Student for eligibility for special education services;

b) Find Student eligible for special education services under the category of other health impairment, due to attention deficit hyperactivity disorder, emotional disturbance or specific learning disability; or

c) Provide Student with special education services through an individualized education program?

2) Did District deny Student a free appropriate public education at the May 20, 2014 and March 23, 2015 individualized educational program team meetings when it failed to provide meaningful parental participation by:

a) Failing to consider parental concerns regarding Student's needs in the areas of academics, attendance, psychological functioning and social-emotional functioning;

b) Failing to consider the recommendations of outside professionals; and

c) Predetermining eligibility, placement and services?

Proposed Resolutions:

Compensatory education and reimbursement in the form of tuition at Frostig Center for the 2015 – 2016 and 2016 – 2017 school year, speech and language therapy from a non-public agency, mental health therapy, social skills therapy, applied behavior analysis services to address anxiety, behavioral needs and obsessive-compulsive disorder, and transportation reimbursement for the foregoing services.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. Except as permitted herein 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-1, S-2, 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 accordance with Education Code section 56505. 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.

The parties shall meet and confer by no later than **5:00 p.m. on September 11, 2015**, to discuss exhibits and eliminate duplicate exhibits from the exhibit binders.

Each exhibit shall consist of one document; separate documents may not be combined into one exhibit. Excerpts of an audio record of an individualized education program team meeting, if any, should be transcribed and offered as documentary evidence; that portion of the audio record transcribed shall be provided to the opposing party with the transcript to allow an opportunity to verify the accuracy of the transcription. Transcription need not be done by a certified court reporter.

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 not later than **September 11, 2015**.

District shall include, as part of its exhibits, the school calendar(s) for the years at issue. Notwithstanding the requirements of Education Code section 56505, subd. (e)(7), District shall serve a copy of the school calendar(s) on Student not later than **September 11, 2015** and include the school calendar(s) in the binders provided for use by the witnesses and the ALJ.

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).

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.

The parties shall comply with Education Code section 56505 (e)(7). No party shall be permitted to call any witnesses not timely disclosed except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

The parties shall meet and confer by **5:00 p.m., September 11, 2015** as to the schedule of witnesses and coordinate the availability and order of witnesses to ensure that there is a witness available to testify at all times during the hearing and to ensure that the hearing is completed as scheduled.

On the first day of hearing before the first witness testifies, the parties shall provide the ALJ with one **joint** detailed hour-by-hour schedule of all witnesses expected to testify at

hearing, which list shall also include an estimate of time for each party's direct and cross-examination.

Each witness will only be called once to testify, except for rebuttal purposes, and all parties shall examine the witness when the witness is first called. 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 each 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 such evidence. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

5. 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. Prior to the hearing, the proponent of the witness shall provide the proposed witness with a complete set of duplicate exhibit binders from all parties, containing all exhibits from each party, and instruct the witness not to remove any documents from the exhibit binders. Unless otherwise ordered, the witness shall testify on a land-line telephone while alone in a private room. No witness will be heard by telephone unless all these requirements have been fulfilled.

Student may seek telephonic testimony from the follow expert witnesses, due to health issues: Bodil Sivestein, Ph.D., Alecia Elliot, S.L.P., and Dr. Deborah Neal. However, as definitive information was unavailable at the time of the PHC, no rulings have been made and the matter was deferred to the first day of hearing. Telephonic testimony is disfavored and Student will be required to show good cause at the time of hearing.

6. Motions. At present, no other prehearing motions are pending or contemplated. Unless otherwise provided in this order or permitted by the hearing ALJ, any prehearing motion filed after the prehearing conference shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not made prior to or at the prehearing conference.

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

The parties shall meet and confer **by 5:00 p.m., September 11, 2015** to determine legal and factual stipulations, if any, to be submitted at hearing.

8. 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 during the hearing unless permission to the contrary is obtained from the ALJ. There shall be no texting permitted while the hearing is in session.

Student's request to audiotape the hearing is granted subject to the following conditions, which shall be applicable to both parties: (1) Such recording shall be for counsel's personal use only and only for review and preparation of the hearing; (2) The recording device shall be turned on only when the ALJ states that the matter is on the record, and shall be turned off when the ALJ states that the matter is off the record; (3) The parties shall not play any part of the recording for any prospective witness(es) and the recording shall not be disseminated; (4) The parties shall not use the recording in any subsequent due process hearing; and (5) The parties shall dispose of the unofficial recording when the time for appeal of the hearing decision has expired. Any recording made by either party is not the official record and is permitted as a courtesy, unless otherwise ordered by the hearing ALJ. The OAH recording made by the hearing ALJ is the official record, unless otherwise ordered.

No other persons shall be allowed to audiotape the hearing and no person shall be allowed to take photographs or videotape of the proceedings, unless otherwise ordered by the ALJ.

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. Special Needs and Accommodations. A Spanish language interpreter is required. At present neither party anticipates the need for any other special accommodation for any witness or party, or for any other translation services.

A party or participant to this case, such as a witness, requiring reasonable ccommodation to participate in the hearing may contact the assigned calendar clerk at (916) 263-0880 or the OAH ADA Coordinator at OAHADA@dgs.ca.gov or (916) 263-0880 as soon as the need is made known. Additional information concerning requests for reasonable accommodation is available on OAH's website at http://www.dgs.ca.gov/oah/Home/Accommodations.aspx.

11. Hearing Closed To the Public. The hearing will be closed to the public.

12. 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.

13. Sanctions. The failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: September 04, 2015

/S/

Cole Dalton
Administrative Law Judge
Office of Administrative Hearings