BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENTS ON BEHALF OF STUDENT,	OAH Case No. 2017101237
v.	ORDER FOLLOWING PREHEARING CONFERENCE
MANHATTAN BEACH UNIFIED SCHOOL DISTRICT.	

On June 1, 2018, a telephonic prehearing conference was held before Administrative Law Judge Chris Butchko, Office of Administrative Hearings. Jane DuBovy, Attorney at Law, appeared on behalf of Student. David Salazar, Attorney at Law, appeared on behalf of Manhattan Beach 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 12-14, 18-19, and 26-29, 2018, and continue[1] day to day, Tuesday through Thursday, at the discretion of the ALJ. The hearing shall take place at District's offices located at 325 South Peck Avenue, Manhattan Beach, CA 90266. 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, the named local educational agency 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 certified that the facilities used for this case comply with the law. The local educational agency shall inform OAH within two days of the date of this order if they are able to certify that it will provide a facility that complies with the law.

Prior to the beginning of the hearing, District 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 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. Parking spaces shall be reserved for the use of Parents, their counsel, and the ALJ. District shall provide in the hearing room drinking water and tissue for all parties, witnesses,

[1] The parties' requested hearing date of June 15, 2018, is not available.

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. District 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. District reported at hearing that the District Offices may not be available for hearing and the location may need to be changed to a neighboring facility. District stated that it would certify the location's compliance with all laws governing accessibility. The ALJ directed District to notify opposing counsel immediately if the location had to be changed so that the witnesses could be notified.

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

(1) Whether District infringed upon Parents' right to meaningful participation in the Individualized Education Program process and caused a loss of educational benefit, thereby procedurally denying Student a free appropriate public education by failing to review and revise her IEP based on lack of anticipated progress during the 2015- 2016 school year and the 2016-2017 school year.

(2) Whether District infringed upon Parents' right to meaningful participation in the IEP process and caused a loss of educational benefit thereby procedurally denying Student a FAPE in the development of Student's IEPs in January 2016 and April 2016 by:

a. Failing to take Parents' concerns into consideration in the development of Student's IEP;

b. Failing to include all required content in the IEP document, including annual goals in all areas of need arising from Student's disability, a statement of the special education and related services to be provided, and a clear statement of the frequency and duration of services with sufficient details to allow Parents to understand what was offered and provide informed consent;

c. Failing to consider results of private and independent evaluations including assessment results from Lindamood Bell and prior independent education evaluations, in determinations regarding placement, services, and the provision of FAPE; or

d. Failing to ensure that Parents were members of any team that made decisions regarding Student's educational placement and program and predetermining or unilaterally determining that it would only offer its own specialized academic instruction program without consideration of options that would provide Student with one-to-one instruction and interventions;

(3) Whether District infringed upon Parents' right to meaningful participation in the IEP process and caused a loss of educational benefit thereby procedurally denying Student a FAPE in the development of Student's IEPs in October 2016, November 8, 2016, November 16, 2016, and December 2016 by:

a. Failing to take Parents' concerns into consideration in the development of Student's IEP;

b. Failing to include all required content in the IEP document, including annual goals in all areas of need arising from Student's disability, a statement of the special education and related services to be provided, and a clear statement of the frequency and duration of services with sufficient details to allow Parents to understand what was offered and provide informed consent;

c. Failing to consider results of private and independent evaluations in determinations regarding placement, services and the provision of FAPE;

d. Failing to ensure that Parents were members of any team that made decisions regarding Student's educational placement and program and predetermining or unilaterally determining that it would only offer its own specialized academic instruction program without consideration of options that would provide Student with one-to-one instruction and interventions; or

e. Failing to provide prior written notice with all required information of the refusal to offer additional intensive and individualized services, supports, and interventions as requested by Parents.

(4) Whether District infringed upon Parents' right to meaningful participation thereby procedurally denying Student a FAPE at the time of Student's hospitalization and inability to return to school in January 2017, by failing to make the full continuum of placements available to Student, including placement in the home or hospital setting, and failing to ensure that Student was offered and provided appropriate and individually determined supports while she was unable to attend school.

(5) Whether District infringed upon Parents' right to meaningful participation in the IEP process and caused a loss of educational benefit thereby procedurally denying Student a FAPE in the development of Student's IEP in May 2017 by:

a. Failing to take Parents' concerns into consideration in the development of Student's IEP;

b. Failing to include all required content in the IEP document including annual goals in all areas of need arising from Student's disability, a statement of the special education and related services to be provided, and a clear statement of the frequency and duration of services with sufficient details to allow Parents to understand what was offered and provide informed consent;

c. Failing to consider results of private and independent evaluations in determinations regarding placement, services and the provision of FAPE;

d. Failing to ensure that Parents were members of any team that made decisions regarding Student's educational placement and program and predetermining

or unilaterally determining that it would only offer placement in the Success Learning Center non-public school, without participation by Parents in the decision;

e. Failing to provide prior written notice with all required information of the refusal to offer additional intensive and individualized services, supports and interventions as requested by Parents; or

f. Failing to provide prior written notice with all required information of the proposal to change Student's placement.

(6) Whether District infringed upon Parents' right to meaningful participation in the IEP process and caused a loss of educational benefit thereby procedurally denying Student a FAPE in the development of Student's IEP in May 2017 by:

a. Failing to take Parents' concerns into consideration in the development of Student's IEP;

b. Failing to include all required content in the IEP document including annual goals in all areas of need arising from Student's disability, a statement of the special education and related services to be provided, and a clear statement of the frequency and duration of services with sufficient details to allow Parents to understand what was offered and provide informed consent;

c. Failing to consider results of private and independent evaluations in determinations regarding placement, services and the provision of FAPE;

d. Failing to ensure that Parents were members of any team that made decisions regarding Student's educational placement and program, and predetermining or unilaterally determining that it would only offer placement in the Success Learning Center non-public school without participation by Parents in the decision;

e. Failing to provide prior written notice with all required information of the refusal to offer additional intensive and individualized services, supports and interventions as requested by Parents; or

f. Failing to provide prior written notice with all required information of the proposal to change Student's placement.

(7) Whether District infringed upon Parents' right to meaningful participation in the IEP process and caused a loss of educational benefit thereby procedurally denying Student a FAPE in the development of Student's IEP in September 2017 by:

a. Failing to take Parents' concerns into consideration in the development of Student's IEP;

b. Failing to include all required content in the IEP document including annual goals in all areas of need arising from Student's disability, a statement of the special education and related services to be provided, and a clear statement of the frequency and duration of services with sufficient details to allow Parents to understand what was offered and provide informed consent;

c. Failing to consider results of private and independent evaluations in determinations regarding placement, services and the provision of FAPE;

d. Failing to ensure that Parents were members of any team that made decisions regarding Student's educational placement and program, and predetermining or unilaterally determining that it would only offer placement in the Success Learning Center non-public school without participation by Parents in the decision;

e. Failing to provide prior written notice with all required information of the refusal to offer additional intensive and individualized services, supports and interventions as requested by Parents;

f. Failing to provide prior written notice with all required information of the proposal to change Student's placement; or

g. Failing to provide prior written notice with all required information of the proposal to change Student's eligibility.

(8) Whether District infringed upon Parents' right to meaningful participation and caused a loss of educational benefit when it failed to provide prior written notice with all required information of the refusal to offer additional intensive and individualized services, supports and interventions, and a possible change of placement, as requested by Parents and recommended by Dr. Cowart, and of its refusal to immediately convene and IEP to discuss Student's escalating behaviors in February 2018.

(9) Whether District infringed upon Parents' right to meaningful participation and caused a loss of educational benefit when it failed to convene an IEP meeting and make amendments to the IEP to address Student's lack of progress and regression in the area of behavior and social/emotional functioning in February 2018.

(10) Whether District denied Student a FAPE by failing to conduct an appropriate evaluation in all areas of suspected disability when it failed to conduct a comprehensive Social/Emotional Assessment prior to November 2016 despite knowledge of Student's anxiety and related needs.

(11) Whether District denied Student a FAPE by failing to conduct an appropriate evaluation in all areas of suspected disability when it reevaluated Student in November/December 2016, specifically because its Social Emotional Assessment was not conducted by assessors with expertise in Student's complex multiple diagnoses, was not sufficiently comprehensive to identify each of Student's unique special education and related service needs, did not utilize a variety of assessment tools and strategies, and did not comport with requirements under the IDEA.

(12) Whether District denied Student a FAPE by failing to conduct an appropriate evaluation in all areas of suspected disability when it reevaluated Student in September 2017, specifically because its Psychoeducational Evaluation was not conducted by assessors with expertise in Student's complex multiple diagnoses, was not sufficiently comprehensive to identify each of Student's unique special education and related service needs, did not utilize a variety of assessment tools and strategies, and did not comport with the requirements of the IDEA.

(13) Whether throughout the 2015-2016 school year from October 2015 forward, including extended school year 2016, the 2016-2017 school year, including extended school year 2017, and the 2017-2018 school year, the District substantively denied Student a FAPE in the IEPs developed in January 2016, April 2016, October 2016, November 8, 2016, November 16, 2016, December 2016, May 2017 and September 2017 by:

a. Failing to develop appropriate and ambitious annual goals in all areas of need and to enable Student to make progress towards general education curriculum;

b. Failing to offer and provide appropriate and sufficient related services and other supports and strategies in the area of counseling/mental health, including sufficient family/parent therapy and individual therapy by a qualified mental health specialist outside of the school day to enable Student to make progress and to meet Student's unique needs;

c. Failing to offer and provide appropriate and sufficient related services in the area of social skills to meet Student's needs and allow her to make progress;

d. Failing to offer and provide one-to-one instruction individualized to Student's unique needs and abilities and provided in an appropriate setting to allow Student to make appropriate progress and work towards general education curriculum and expectations;

e. Failing to offer and provide an appropriate placement in a setting with integrated interventions and supports appropriate to meet Student's needs throughout the day, one-to-one teaching in an environment with a I:1 student/teacher ratio with opportunities for integration into small group learning environments, and flexibility to allow Student to access the curriculum without exacerbating her anxiety; or

f. Failing to offer and provide a program for extended school year that would meet Student's needs and prevent regression.

(14) Whether from February 6, 2018 forward, District substantively denied Student a FAPE by:

a. Failing to develop appropriate and ambitious annual goals in all areas of need and to enable Student to make progress towards general education curriculum;

b. Failing to offer and provide appropriate and sufficient related services and other supports and strategies in the area of counseling/mental health, including sufficient family/parent therapy and individual therapy by a qualified mental health specialist outside of the school day to enable Student to make progress and to meet Student's unique needs;

c. Failing to offer and provide appropriate and sufficient related services in the area of social skills to meet Student's needs and allow her to make progress;

d. Failing to offer and provide one-to-one instruction individualized to Student's unique needs and abilities and provided in an appropriate setting in order to allow Student to make appropriate progress and work towards general education curriculum and expectations;

e. Failing to offer and provide an appropriate placement in a setting with integrated interventions and supports appropriate to meet Student's needs throughout

the day, one-to-one teaching in an environment with a one-to-one student/teacher ratio with opportunities for integration into small group learning environments, and flexibility to allow Student to access the curriculum without exasperating her anxiety; or

f. Failing to offer and provide a program for extended school year that would meet Student's needs and prevent regression.

Student's Proposed Resolutions are for:

(1) Independent Educational Evaluations funded by the District by assessors of Parents' choice in Psychoeducational functioning, Academics, and Social/Emotional needs (Educationally-related Intensive Counseling Services).

(2) Reimbursement to Parents for the costs of private instruction and related services including a) One-to-one instruction provided by Lindamood Bell and educational therapists; b) Counseling and individual therapy; c) Costs incurred for an Evolve Treatment Center program; d) provision of one-to-one instruction and intervention provided at the PPA Innovation Program during the summer of 2017; e) Mileage reimbursement to Parents for trips to and from all services and interventions, f) The full cost of placement in the PPA Innovation Program for the full school year; and g) Costs for related services necessary at PPA, including but not limited to social skills and school based counseling.

(3) Prospectively, Parents seek a) ongoing therapeutic mental health services, including both individual therapy and parent counseling; b) Mileage reimbursement to Parents for trips to and from all services and PPA; c) Compensatory and prospective services in academics and for social/emotional functioning; d) Funding for a 24/7 level of care including intensive therapeutic interventions outside of the school day provided as wrap around support or placement in an appropriate residential treatment center.

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"). Each exhibit shall be internally paginated by exhibit, or all of a party's exhibit pages shall be consecutively numbered. 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 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 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 are directed to meet and confer by **June 7, 2018**, to reach agreement on a witness schedule for the hearing. The District shall have witnesses available in case agreement on a witness list is not reached. Prior to the commencement of each day of the due process hearing, the parties will present to the ALJ a schedule of witnesses and the estimated length of time anticipated for direct and cross-examination of each witness. If the parties are unable to provide such a schedule, they 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, 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 witnesses are anticipated to need to appear telephonically.

7. Electronic Recording of Hearing.

a. Audio Recording. Student's motion to make an audio recording of the hearing is granted, 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, to avoid recording conversations while off the record; and 3) that operation of the party's recording mechanism will not be allowed to delay the hearing. Permission to record the hearing is extended to District on the same terms.

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 shall present her case-in-chief, followed by District.

9. Motions. No pretrial motions were before the ALJ at the time of the PHC. Any motion filed after the PHC 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.

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 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/Accessibility.aspx.

14. Hearing Open to the Public. Per the Student's request, the hearing will be open 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 OAH AT https://www.applications.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 4, 2018

DocuSigned by:
Chris Butchko
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CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings