BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016060728 ORDER FOLLOWING PREHEARING CONFERENCE

On August 22, 2016, a telephonic prehearing conference was held before Administrative Law Judge Robert G. Martin, Office of Administrative Hearings. Parent appeared on behalf of Student. Patrick Balucan, Attorney at Law, appeared on behalf of Los Angeles Unified School District. Spanish language Interpreter Yazmin Lope interpreted the PHC from Spanish to English and English to Spanish. 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 6, 7 and 8, 2016, and continue day to day thereafter, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at Office of Administrative Hearings, 15350 Sherman Way, Suite 300, Van Nuys, CA 91406. The hearing shall begin at 1:30 p.m. on September 6, 2016, and at 9:00 a.m. all other days, unless otherwise ordered.

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 to be resolved at the due process hearing, as alleged in the complaint and clarified by the parties and the ALJ at the PHC, and Student's proposed resolutions, are as follows:

Whether District denied Student a free appropriate public education from June 9, 2014 to the filing of the complaint by:

(1) Failing to provide Student placement in the least restrictive environment appropriate for Student;

(2) Failing to develop an appropriate transition plan for Student;

(3) Failing to provide Student an academic tutor;

(4) Failing to provide Student appropriate services to address Student's needs in the area of social skills;

(5) Failing to provide Student appropriate occupational therapy services;

(6) Failing to provide appropriate speech and language services;

(7) Failing to provide Student appropriate services to address Student's needs in the area of English language development;

(8) Failing to prepare Student to take the following examinations: CELDT, High School Graduation Exams of California, CAHSEE, PSAT/NMSQT and CST, the required exams by the Universities, and SAT; and

(9) Failing to complete a timely triennial psychoeducational evaluation of Student.

Student requested the following remedies:

An order directing District to provide Student:

(1) Placement in a non-public school such as Help Group Village Glen at District's expense, until Student reaches age 22, and home to school transportation;

(2) An appropriate transition plan for Student;

(3) Appropriate services to address Student's academic needs;

(4) Social skills training;

(5) Appropriate occupational therapy services;

(6) Appropriate speech and language services;

(7) Appropriate services to address Student's needs in the area of English language development;

(8) Appropriate services to prepare Student to take the following examinations: CELDT, High School Graduation Exams of California, CAHSEE, PSAT/NMSQT and CST, the required exams by the Universities, and SAT

(9) An independent neuropsychological evaluation at District expense by Mary Large, including assessment of Student in the areas of cognitive skills, working memory, academics, education, appropriate placement, existing

services, language skills, comprehension skills, social skills and daily living skills.

3. Exhibits. Student identified 38 exhibits and one category of exhibits (medical information) that Student intends to present at hearing. District identified six exhibits that it intends to present at hearing. The parties shall, as much as reasonably possible, have an individual tab for each exhibit. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. Student shall mark Student's exhibits using the numbers S1, S2, S3, etc., and Respondents shall mark its exhibits using numbers D1, D2, D3, etc. Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be sequentially Bates-stamped. Each exhibit binder shall contain a detailed table of contents. At the hearing, in addition to its own copy of its exhibits and the copy exchanged with the other party, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and an exhibit binder for use by witnesses (*i.e.*, each party should make at least an original and three copies of its exhibits to exchange and to use at the hearing). 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. Each party will include in its exhibits current resumes of its expert witnesses, and current resumes of any of its percipient witness whose education and employment are expected to be subjects of direct examination.

4. Witnesses. Student identified two percipient witnesses and no expert witnesses whom Student intended to present at hearing. District identified 11 percipient witnesses and no expert witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses. District agreed that it would make current District employees under its control reasonably available to Student without the need for subpoena. District will also inform Student of the identity of, and available contact information for, any witness identified by Student as an employee of District who has left District's employ, by 5:00 p.m. on Tuesday, August 30, 2016. The parties will 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.

a. Timely Disclosure of Witnesses and Exhibits. Education Code section 56505, subdivision (e)(7), requires each party to disclose, at least five business days prior to the hearing, a list of all witnesses and their general area of testimony that the parties intend to present at the hearing, and a copy of all documents, including all assessments completed by that date and recommendations based on the assessments, that the parties intend to use at the hearing. The parties shall exchange final witness lists and exhibit binders on or before 5:00 p.m. on Monday, August 29, 2016 at 5pm. Witnesses and documents not disclosed by that time may be excluded at the request of the other party from introduction at the hearing. Each party reserves the right to present additional witness and documents for purposes of rebuttal. Each party will file the party's final witness list, and final list of hearing exhibits (but not the exhibits themselves) with OAH by no later than 5:00 p.m. on Tuesday, August 30, 2016..

b. Meet and Confer Regarding Witnesses. The parties are ordered to meet and confer on September 1, 2016 at 4:30 p.m. regarding the schedule of witnesses for the hearing. District's counsel for the hearing will place the telephone call to Parent to initiate the meet and confer. The parties are to coordinate the availability and order of testimony 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. The parties shall discuss a time estimate of the length of each witness's direct examination testimony, and identify those witnesses the party intends to call, as opposed to witnesses the party may call, depending on the flow of the hearing and the evidence.

On the first day of hearing, before the first witness testifies, the parties shall provide the ALJ with one detailed hour-by-hour schedule of all witnesses expected to testify at the hearing, which list shall also include an estimate of time for each party's direct and cross-examination. 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 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 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. Neither party requested that a witness be permitted to appear telephonically at hearing in this matter. 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.

7. Electronic Recording of Hearing.

a. Audio Recording. Neither party requested permission to make an audio recording of the hearing. When requested, permission to make an audio recording will only be granted subject to the following conditions: (i) OAH's recording is the only official recording; (ii) 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; (iii) the recording

will not be shared with any witness or third party; and (iv) 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.

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 Student's case-in-chief, followed by Respondents.

9. Motions. District anticipates filing a motion to dismiss one or more Student issues that District contends are not within OAH's jurisdiction. Student anticipates filing a motion for an order directing District to provide Student Spanish-language translations of certain District filings and/or exhibits. In the event that any other motion, other than a challenge to a newly-assigned ALJ for the hearing, is brought after this date, it 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 PHC.

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 Parties 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**.** Parent requires a Spanish language interpreter for 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: http://www.dgs.ca.gov/oah/Home/Accessibility.aspx.

14. Hearing is Open to the Public. At Student's request, the hearing will be open to the public. As discussed at the PHC, an open hearing means that District employees who

are not witnesses, or other people who are unknown to Parents, may attend the hearing. Any person disclosed on either party's witness list, other than Parents, Student, and District's designated representative, will be excluded from the hearing. Student shall immediately notify District and OAH if Student becomes aware that there will be media attending the hearing.

15. Settlement. The parties are encouraged to continue working together to complete 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. 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 AND SHALL 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. 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: August 23, 2016

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ROBERT MARTIN
Administrative Law Judge
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Office of Administrative Hearings