BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. GOLDEN PLAINS UNIFIED SCHOOL DISTRICT.	OAH Case No. 2019040042 ORDER FOLLOWING PREHEARING CONFERENCE AND GRANTING CHANGE OF VENUE

On May 20, 2019, a telephonic prehearing conference was held before Administrative Law Judge Theresa Ravandi, Office of Administrative Hearings. Parent appeared on behalf of Student. Lay advocate Alfonso Padron and Grandmother were also present. Jennifer Rowe Gonzalez, Attorney at Law, appeared on behalf of Golden Plains 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 May 29 and 30, 2019, and continue 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. On May 16, 2019, Golden Plains filed a motion to change the hearing location to a nearby school in order to insure an accessible location.

The Individuals with Disabilities Education Act and the Education Code require that due process hearings be conducted "at a time and place reasonably convenient to the parents and child involved." (34 C.F.R. § 300.515, subd. (d); Ed. Code §56505, subd. (b).) The proposed location of San Joaquin Elementary school is close to the original hearing location at Golden Plains' District Office. Student did not oppose this request. The motion to change venue was granted. The hearing shall take place at San Joaquin Elementary School, located at 8535 S. 9th Street, San Joaquin, California, 93660.

As ordered in the scheduling order, Golden Plains 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 persons with disabilities. Golden Plains has certified that the facilities used for this case comply with the law.

Prior to the beginning of the hearing, Golden Plains 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. Golden Plains 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. Golden Plains 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 at the due process hearing, and the proposed resolutions, are listed below.

Issues: During the 2016-2017 school year beginning April 2, 2017, the 2017-2018 school year, and the 2018-2019 school year until the time of hearing, did Golden Plains deny Student a free appropriate public education as follows:

a. failing to conduct an educationally related mental health assessment after Student disclosed suicidal ideation in November 2018;

b. failing to conduct a functional behavior assessment and develop a behavior intervention plan after the documented bullying and disclosure of suicidal ideation in November 2018;

c. failing to offer an appropriate level of psychological and counseling services beginning in April 2017;

d. failing to conduct an appropriate psycho-educational and social-emotional assessment in April 2018 when Student was not making expected progress;

e. failing to develop adequate and measurable academic goals, objectives, and baselines beginning April 2017; and

f. failing to provide Parent with prior written notice of the change in Student's case manager in March 2019?

Proposed Resolutions: Student seeks an award of independent psycho-educational, functional behavior, and educationally related mental health evaluations; compensatory education of 30 hours of mental health counseling and 30 hours of remedial tutoring; and any other appropriate relief.

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 exhibits shall be Bates-stamped. Each exhibit binder shall contain a detailed table of contents. The parties shall ensure that there is only one document or a short series of related documents for each exhibit tab. 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.

The ALJ has requested that Golden Plains provide copies of the school year calendars applicable to Student for each school year at issue.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not timely exchanged shall not be admitted into evidence at the hearing unless 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. Golden Plains has agreed to make its employees who are identified as witnesses reasonably available for hearing prior to summer break which begins June 6, 2019. 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 timely disclosed except for good cause shown 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 shall attempt to reach agreement on a witness list for the first day of hearing. Student 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. 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. 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. Neither party requested permission for a witness to appear telephonically.

7. Electronic Recording of Hearing.

a. Audio Recording. Golden Plains' 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, in order 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. Student is also authorized to make an audio recording, subject to the same conditions.

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 and bears the burden of proof. Accordingly, Student shall present his case-in-chief, followed by Golden Plains.

9. Motions. Golden Plains indicated that it may be filing a motion relative to OAH's May 20, 2019 Order denying its motion to dismiss. No other pretrial motions are pending or contemplated. Any motion, other than that referenced above, 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 three business days prior to the prehearing conference of May 20, 2019.

10. Compensatory Education and 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 at the time of hearing to the assigned ALJ in written form and signed by both parties.

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, 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.

14. Hearing Open To the Public. At the request of Student, 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 THE OAH AT https://www.applications.dgsapps.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: May 20, 2019

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Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings