BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. GLENDALE UNIFIED SCHOOL DISTRICT,	OAH Case No. 2015071054
GLENDALE UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2015091020 ORDER FOLLOWING PREHEARING CONFERENCE

On October 16, 2015, a telephonic prehearing conference was held before Administrative Law Judge Clifford H. Woosley, Office of Administrative Hearings. Bryan C. Wynn, Attorney at Law, appeared on behalf of Student. Melissa Hatch, attorney at law, appeared on behalf of Glendale 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 **October 27, 28, and 29, 2015**, continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. The first day of hearing shall begin at 9:30 a.m., and each subsequent day shall begin at 9:00 a.m. The hearing shall take place at the District's offices, 223 North Jackson Street, Glendale, CA 91206.

District shall provide facilities for the scheduled mediation and hearing that fully comply 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.A. § 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.

District shall certify that the facilities used for this case comply with the law by filing a certification of compliance. District had not yet filed a certification. ALJ Woosley reminded District's counsel of the need to file certification that District's facilities are in full compliance.

District shall file a certification of compliance with OAH within five days of the date of this order.

If the signed Local Education Agency Certification Form or a comparable certification is not received by OAH within five days of the date of this order, OAH may schedule the case at another legally compliant location and report this failure to the Department of Education. If the assigned ALJ determines a location provided by the local education agency does not fully comply 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.A. § 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 ALJ may order the proceedings moved or continued, and report the failure to the Department of Education.

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.

Student's issue at the due process hearing is:

For the 2014-2015 school year, did District deny Student a free appropriate public education, in the least restrictive environment, by failing to offer Student an education program and related services that met his unique and individual needs because the placement and services were too restrictive, did not provide the opportunity for Student to develop requisite educational skills, and/or did not afford an environment for meaningful progress?

Student proposes the following remedies:

(1) Reimbursement of all costs incurred for Parents' placement of Student at the Art of Learning Academy during the 2014-2015 school year, in the amount of $30,000, which includes tuition and mileage reimbursement.

(2) Reimbursement for the cost of Dr. Jared Maloff's assessment.

District's issues at the due process hearing are:

(1) Did District offer Student a FAPE in the LRE at the February 3, 2015 IEP, as amended on April 14, 2015, for the 2015-2016 school year?

(2) Is the District entitled to implement Student's February 3, 2015, as amended on April 14, 2015, without parental consent?

District proposes the following remedies:

(1) A finding that District offered Student a FAPE in the LRE at the February 3, 2015 IEP, as amended on April 14, 2015, for the 2015-2016 school year.

(2) A finding that, if Student desires special education service from District, Student shall participate in the special education program that District offered at the February 3, 2015 IEP, as amended on April 14, 2015, for the 2015-2016 school year.

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 are to serve their evidence binders on each other by **October 20, 2015**, 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.

If a party intends to rely upon a witness's education and professional experience in presenting testimony, the party must include the curriculum vitae of each such witness as part of the party's exhibits. The curriculum vitae for the two expert witnesses listed by Student in his PHC statement – Dr. Jared Maloff and Dr. Stephanie Marcy – shall be included in the exhibit binder served upon District's counsel. All other curriculum vitae must be exchanged at least one business day before the commencement of hearing.

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 **October 23, 2015**, for purposes of preparing a schedule of witnesses to be presented to the ALJ on the first day of hearing. 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 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. 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.

Neither party anticipates a witness testifying by telephone.

7. Timely Disclosure of Witnesses/Exhibits. Both parties shall exchange exhibits at least five business days before the first day of hearing. (Ed. Code, § 56505, subd. (e)(7).)

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].) Student is the petitioner in the primary case of these two consolidated matters and bears the burden of proof as to claims made in his complaint, and will first present evidence as to her issues, to be followed by District's presentation of evidence. District is the petitioner in the secondary case of these two consolidated matters and bears the burden of proof as to claims made in its complaint, and will present evidence as to its issues, following Student's presentation of his case.

9. Motions. No pretrial motions are pending. Any motion filed after this date, including motions for any further continuances, 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 October 16, 2015.

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. At present, neither party anticipates the need for special accommodation for any witness or party, or for translation services.

A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk at (916) 263-0880, 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.

14. Hearing Closed To the Public. Student elects to have the hearing closed 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 **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.

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

IT IS SO ORDERED.

DATE: October 19, 2015

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings