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. 2015050710 ORDER FOLLOWING PREHEARING CONFERENCE

On August 28, 2015, a telephonic prehearing conference was held before Administrative Law Judge Chris Butchko, Office of Administrative Hearings. Jennifer Guze Campbell, Attorney at Law, and Sean Pan, Attorney at Law, appeared on behalf of Student. Patrick Balucan, Attorney at Law, appeared on behalf of 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 in this matter is scheduled to take place on September 8-10, 2015, and continue day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin at 9:30 a.m. each day pursuant to the request of counsel. The hearing shall take place at the OAH offices located at 15350 Sherman Way, Van Nuys, CA 91406.

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.

Whether Student was denied a free and appropriate public education in the 2014-2015 school year because:

a) District failed to appropriately address bullying relating to Student's disabling condition;

b) District failed to provide a written response to their request to change Student's educational placement, thereby significantly impeding Parent's opportunity to participate in the decision making process regarding Student's education; and

c) District failed to inform parents of how to file a written request and failed to respond to parents' written request for an individualized educational program meeting, thereby significantly impeding Parent's opportunity to participate in the decision making process regarding Student's education.

Student's proposed resolutions are to be placed at a NPS with an autism program and for district staff to be trained to respond to bullying.[1]

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 consecutively numbered or Bates-stamped. Each exhibit binder shall contain a detailed table of contents. The parties represent that they have served 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.

Student has moved to present transcripts of the IEP team meetings. The motion is granted, subject to the following requirements: 1) copies of the full audio recordings will be provided to District at least one day prior to the hearing and the hearing officer on the first day of hearing; 2) Student shall designate, via highlighting or other marking, those sections of the transcript he expects to use at hearing, and those designations shall include timestamps to the audio recording. District shall have until the fifth business day following the close of evidence to file a brief setting out any material discrepancy between the transcription and the recording. If any such brief is filed, Student shall have two business days from the date of that filing to respond.

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

[1] Student included claims for violation of the Americans with Disabilities Act and the Unruh Act, and has asked for monetary damages in compensation. Since those claims and that relief are not within OAH's jurisdiction, they are dismissed.

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 ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

Parents and Student may sit at counsel table, and a District representative may sit with district's counsel, but otherwise all witnesses will be excluded from the hearing room when they are not testifying. If either parties' representatives are going to testify, their testimony is to be taken at the start of that side's case in chief. Witnesses who have testified are admonished not to discuss their testimony with others until the completion of the hearing. Testifying witnesses are admonished not to confer with counsel regarding their testimony during any breaks in their testimony.

The parties have agreed 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 have agreed to meet and confer to prepare a final witness list, including the anticipated order of the witnesses to be called at the hearing and an estimate of the length of time for the direct examination of each witness the party actually intends to call. Further, 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 present the ALJ with a joint schedule for each day of hearing at the commencement of each day's session.

5. Scope of Witness Examination. To complete the hearing in a reasonable time and for the convenience of the witnesses, both parties are to be prepared to conduct their direct examination 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.

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 a witness appearing telephonically 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. At this time, neither party intends on introducing telephonic testimony. Neither party anticipates needing to present testimony telephonically.

7. Timely Disclosure of Witnesses/Exhibits. Both parties have disclosed their witnesses and exhibits in their prehearing conference statements. Education Code section 56505, subdivision (e)(7), provides for disclosure of witnesses and exhibits "at least" five business days prior to the hearing. Accordingly, no additions to those listed shall be allowed after that time, absent extraordinary circumstances as determined in the discretion of the ALJ.

8. Order of Presentation of Evidence. Student is the petitioner, bears the burden of proof, and will first present evidence as to his issues. The witnesses who are to be called by more than one party will first be examined by Student's counsel. After their direct testimony, District may present them for direct testimony on its behalf and for any cross-examination. Each side will then have the opportunity for further questioning, limited in scope as set forth in Item 5, above.

9. Motions. No pretrial motions are pending or anticipated. Any motion 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 prior to or during the prehearing conference.

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

11. 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.

12. 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.

13. Special Needs and Accommodations. No accommodations or interpretation services are expected to be required.

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 a 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. The hearing will be closed to the public.

15. Recording of Hearing. Student has requested to be allowed to tape the hearing. The request is granted only for purposes of the party's and counsels' personal reference and no stoppages of the hearing will be granted to accommodate the parties' recording, and parties must cease recording when the ALJ informs the parties that the matter is off the record. OAH's recordings are the official record of proceedings. The recording shall be destroyed following final resolution of this matter. Failure to comply will cause the ALJ not to permit the offending party to record the hearing.

16. 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.

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

IT IS SO ORDERED.

DATE: August 31, 2015.

/s/

CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings