BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017080121 ORDER FOLLOWING PREHEARING CONFERENCE

On January 12, 2018, Administrative Law Judge Adrienne L. Krikorian, Office of Administrative Hearings held a telephonic prehearing conference. Bryan Winn and Eric Menyuk appeared on Student's behalf. Kristen Myers appeared on behalf of Santa Monica-Malibu Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ makes the following orders.

1. Hearing Dates, Times, and Location. The hearing shall take place on January 23, 24, and 25, 2018, and continuing day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at the District's offices located at 2828 4th Street, Santa Monica, California 90405. 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. District's counsel indicated the hearing location may change. In that event, District shall file and serve a notice of change of hearing location with OAH no later than two business days before the first day of hearing.

As ordered in the scheduling order, the named local educational agency was to 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 failed to certify that it would provide a facility for this case that complied with the law. The local educational agency shall inform OAH within two days of the date of this order it is 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. District shall provide drinking water and tissue to all parties, witnesses and the ALJ. District shall also ensure that parking is available for the ALJ, the parties and their attorneys,

and witnesses. 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.

2. Issue and Proposed Resolutions. Following a discussion with the parties, the parties agree that the only issue at the due process hearing, and the proposed resolutions, are as listed below.

Did District deny Student a free appropriate public education for the 2016-2017 school year by failing to offer her an appropriate educational setting to meet her unique needs in the areas of emotional disturbance and transition?

Student's proposed resolutions: reimbursement of placement costs at Areté Preparatory Academy for the 2016-2017 school year; reimbursement for the costs of psychological services in the spring of 2017; and reimbursement for transportation costs at District's rate of reimbursement.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. Except as permitted in this order or otherwise ordered by the ALJ, 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). The pages of each exhibit shall be numbered internally, or the entire binder may be numbered consecutively, excluding exhibit tabs and cover pages that are not part of an exhibit.

Exhibit binders shall include a table of contents including the exhibit number, date of document, title and tab number. Exhibits shall be organized chronologically from the earliest date to the latest date, where possible.

Each exhibit shall consist of one document; separate documents may not be combined into one exhibit. Emails may be consolidated into one exhibit if they are part of a single chain of messages. Documents offered as evidence to support a request for reimbursement must be separated by vendor and should be internally chronological where possible.

Excerpts of an audio record of an individualized education program team meeting, if any, should be transcribed and offered as documentary evidence; that portion of the audio record transcribed shall be provided to the opposing party with the transcript to allow an opportunity to verify the accuracy of the transcription. Transcription need not be done by a

certified court reporter. If the parties intend to rely on individualized education programs, the parties shall attach all pages of the IEP(s), including copies of all actual signatures on the IEP(s) and any typewritten or handwritten notes or comments, if any, written on the IEP(s).

The parties shall exchange resumes, and provide a copy for the exhibit binders, for each witness who is expected to testify as to their professional credentials. Notwithstanding the requirements of Education Code section 56505, subdivision (e)(7), the parties shall exchange resumes and curriculum vitae not later than 24 hours before the witness is scheduled to testify. Each resume shall be identified as a separate exhibit.

District shall include as part of its exhibits the school calendar(s) for the year at issue. Notwithstanding the requirements of Education Code section 56505, subdivision (e)(7), District shall serve a copy of the school calendar(s) and include the school calendar(s) in the binders provided for use by the witnesses and the ALJ not later than the first day of hearing.

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 shall not serve exhibits on OAH prior to the hearing.

The parties shall meet and confer before the first day of hearing in order to delete duplicate exhibits from the exhibit binders and to consolidate exhibits where possible. The parties are not required to renumber exhibits if exhibits are removed from their binders. 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 ordered to meet and confer before the first day of hearing as to the schedule of witnesses. On the first day of hearing, the parties shall provide the ALJ with a detailed hour by hour joint witness schedule which shall include a reasonable estimate of time for each side's direct and cross examination for the entire hearing. The District shall have witnesses available if an agreement on a witness list is not reached. 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 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.

Prior to the commencement of the due process hearing, 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 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. District timely filed a motion to present the telephonic testimony of the following witnesses: Angie Alvie, Clarice Goodwin, Donna Jenkins, Amy Wilson, and Caitlin Forcier. At the PHC, District withdrew its request regarding Amy Wilson, and Caitlin Forcier. District's request is based on the fact that the specified witnesses are employed by and located at a residential treatment center in Utah which Student attended.

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. The witness shall testify from a room that is private with no background noise, and the witness shall be the only person in the room during testimony. No witness will be heard by telephone unless all these requirements have been fulfilled.

District's motion is granted. The parties shall meet and confer, as ordered in Paragraph 4, regarding the scheduling of those witnesses designated to testify telephonically. District shall provide each of the witnesses testifying telephonically with a complete exhibit binder from each party, 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.

Student's counsel notified the ALJ and District's counsel that, if District intends to call Student as a witness, Student may not be available to testify in person due to conflicts

with exams at school. Student's counsel may, on the first day of hearing, after meeting and conferring with District's counsel, request permission from the ALJ for Student to testify telephonically.

7. Electronic Recording of Hearing.

a. Audio Recording. Either party may make an audio recording of the hearing as a courtesy and subject to the following conditions: 1) OAH's recording is the only official recording; 2) 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; 3) operation of the party's recording mechanism will not be allowed to delay the hearing; 4) the recording shall not be played or published for a prospective witness; 5) the recording shall not be used for any purpose other than assisting in the representation and presentation of this due process hearing; 6) the parties shall erase, or otherwise destroy, the recording after the hearing and all opportunities for appeal from any decision herein has been exhausted; and 7) the parties shall not use this recording in any subsequent due process 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, subject to Paragraph 5, Student shall present its case-in-chief, followed by District.

9. Motions. No pretrial motions are pending or contemplated. Any motion filed after this date, except as noted in Paragraph 6, shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not made three business days before the prehearing conference on January 12, 2018.

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. Student requested that District provide a private meeting space during the hearing, access to a copier, access to a wireless internet connection, and two power strips at counsel table. Student may meet and confer with District's counsel to determine whether District can provide the items requested. OAH does not provide nor order either party to provide such accommodations.

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 https://www.dgs.ca.gov/oah/Home/Accessibility.aspx.

14. Hearing Closed To the Public. The hearing will be closed to the public unless Student requests it be open.

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.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.

If the parties settle the matter 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. OAH will not cancel the hearing dates without this information.

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

IT IS SO ORDERED.

DATE: January 12, 2018

DocuSigned by:
Adrienne L. Krikorian
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ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings