BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. TORRANCE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016120826 ORDER FOLLOWING PREHEARING CONFERENCE

On February 6, 2017, a telephonic prehearing conference was held before Administrative Law Judge Elsa H. Jones, Office of Administrative Hearings. Bruce Bothwell, Attorney at Law, appeared on behalf of Student and Parent (collectively, Student). Geoffrey Winterowd, Attorney at Law, appeared on behalf of Torrance 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 February 14-16, 2017 and shall continue day to day thereafter, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at District's offices located at 2201 Plaza Del Amo, Room T-3, Torrance, CA 90509. Unless otherwise ordered, the hearing shall begin at 9:30 p.m. on February 14, and at 9:00 a.m. on all other days.

As ordered in the scheduling order, District shall 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. District has certified that the facilities to be used for this case comply with the law.

Prior to the beginning of the hearing, District shall ensure that the hearing room is configured into a courtroom setting, including, (1) a table for Student and his representatives; (2) a table for District's representatives; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. District shall also make reasonable efforts to ensure that drinking water and tissue are available to all parties, witnesses and the ALJ.

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 was 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.

A. Did District deny Student a free appropriate public education from December 15, 2014 to September 25, 2015 by the following:

(1) Failing to offer appropriate goals in the areas of: (a) behavior; (b) social interaction; and (c) academics;

(2) Materially failing to implement Student's behavior services; and

(3) Failing to offer appropriate behavior support?

B. Did District deny Student a FAPE on September 25, 2015, and thereafter by materially failing to implement the services and accommodations contained in Student's September 2014 individualized education program?

C. Did District deny Student a FAPE at the IEP team meeting on September 25, 2015 by failing to find him eligible for special education and related services?

D. Did the November 30, 2016 IEP deprive Student of a FAPE by the following:

(1) Failing to offer appropriate goals in the areas of: (a) behavior; (b) social interaction; and (c) academics;

(2) Materially failing to implement Student's behavior services; and

(3) Failing to offer appropriate behavior support?

Student's proposed resolutions include an order that District convene an IEP team meeting to develop and offer Student appropriate goals in the areas of behavior, social interaction, language and academics. Student also requests that District fund a social skills program, behavior support services and supervision by a nonpublic agency, an independent speech and language evaluation, compensatory speech and language and behavior services by a nonpublic agency, and reimbursement for services provided by Parents.

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 whether 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, by Bates stamping or similar method, from the first page of the first exhibit through the last page of the last exhibit. Each

exhibit binder shall contain a detailed table of contents. 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 parties shall exchange resumes or curriculum vitae for each witness who is expected to testify as to their professional credentials.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not included in a party's final exhibit list and not previously exchanged shall not be admitted into evidence at the hearing at the request of that party except for good cause shown, and unless the ALJ rules that it is otherwise 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, upon timely notice. 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 final witness list, exchanged pursuant to Education Code section 56505, subdivision (e)(7), except for good cause shown, and at the discretion of the ALJ.

The parties are encouraged to review and curtail 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 ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

Except for parties, and individuals who are serving as representatives of a party for purposes of appearance at hearing, no witness will be allowed in the hearing room during the proceedings except when that witness has been called to testify.

The parties shall attempt to reach agreement on a witness list for the first day of hearing. District shall have witnesses available in case agreement on a witness list is not reached. The parties shall be prepared throughout the hearing to discuss the witness schedule and the time the testimony of each 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, at the discretion of the ALJ. 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 anticipates the need for 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 time that the witness is to testify, 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 by landline while alone in a private room. No witness will be heard by telephone unless all these requirements have been fulfilled.

7. Timely Disclosure of Witnesses/Exhibits. Education Code section 56505, subdivision (e)(7), provides for disclosure of witnesses and exhibits at least five business days prior to the hearing.

8. Video Recording of Hearing. 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.

9. 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].) In this matter, Student shall present his case-in-chief first.

10. Motions. No pretrial motions are pending or contemplated. Any motion filed after the PHC 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 February 6, 2017 PHC.

11. 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.

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

13. 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 placed on the vibrate setting during the hearing unless permission to the contrary is obtained from the ALJ. There shall be not texting or tweeting during the hearing unless the ALJ grants permission. There shall be no weapons in the hearing room unless they are borne by authorized law enforcement personnel.

14. Special Needs and Accommodations. At Student's request, OAH will provide a Korean interpreter. 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/Accommodations.aspx

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

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 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 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.

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.

17. Failure to comply with this Order and with the provisions of Education Code section 56505, subdivision (e) (7) may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: February 9, 2017

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Elsa H. Jones
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ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings