BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: EDUCATIONAL RIGHTS HOLDER ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT,	OAH Case No. 2014120059
LOS ANGELES UNIFIED SCHOOL DISTRICT, v. EDUCATIONAL RIGHTS HOLDER ON BEHALF OF STUDENT.	OAH Case No.2014120530 ORDER FOLLOWING PREHEARING CONFERENCE

On February 13, 2017, a telephonic prehearing conference was held before Administrative Law Judge Elsa H. Jones, Office of Administrative Hearings. Janeen Steel, Allison Holcombe, and Devon Hein, Attorneys at Law, appeared on behalf of Educational Rights Holder and Student (collectively, Student). Diane Willis, Attorney at Law, appeared on behalf of Los Angeles 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 21-23, 2017, and shall continue day to day, Monday through Thursday as needed, at the discretion of the ALJ. The hearing shall take place at the offices of OAH, located at 15350 Sherman Way, Suite 300, Van Nuys, California 91406. Unless otherwise ordered, the hearing shall begin at 1:30 p.m. on February 21, 2017, and at 9:00 a.m. on all other days.

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. The issues at the hearing shall be whether Student is entitled to the following remedies:

A. An order that Los Angeles Unified amend Student's February 26, 2014 and October 21, 2014 individualized education programs to offer Student a residential placement for educational purposes;

B. Compensatory education due to the failure of Student's IEP's of February 26, 2014 and October 21, 2014, to offer Student a residential placement for educational purposes; and

C. An order that Los Angeles Unified train its instructors and staff regarding their legal obligations to consider and offer residential placement for educational purposes to foster children who are eligible for special education from Los Angeles Unified.

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"). The parties agreed at the PHC that each party's exhibits shall be tabbed, and their pages consecutively numbered by Bates stamp or similar method, starting where each party's exhibit tab numbers and page numbers in the previous due process hearing left off. Each exhibit binder shall contain a detailed table of contents. The parties agreed that they shall serve their evidence binders on each other by no later than February 14, 2017. 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.

Unless used solely for rebuttal or impeachment, any exhibit not included in a party's 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 at the discretion of the ALJ, and unless the ALJ rules that it is admissible.

4. Witnesses. The parties shall serve their final witness lists on each other and file them with OAH in compliance with Education Code section 56505, subdivision (e)(7). 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 that party's final witness list, except for good cause shown, and at the discretion of the ALJ.

The parties shall attempt to reach agreement on a witness list for the first day of hearing. At all times during the hearing, the parties shall be prepared to discuss the witness

schedule with the ALJ, and the amount of time the testimony of each witness is expected to take.

The ALJ has discretion to limit the number of witnesses and set the length of time allowed for testimony. 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.

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. Student has requested that one of her witnesses, Precious Young, be allowed to appear by telephone. The motion was discussed at the PHC, and the ALJ has taken the request under submission.

Whether a witness may appear by telephone is a matter within the discretion of the ALJ. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) 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 via a landline telephone, while alone in a private room. No witness will be heard by telephone unless all of these requirements have been fulfilled.

7. Electronic Recording of Hearing.

a. Audio Recording. Student's motion to make an audio recording of the hearing is granted, subject to the following conditions: (1) OAH's recording is the only official recording; (2) The recording device will be turned on and off at the same time as the ALJ's recording device, to avoid recording conversations while off the record; (3) Operation of the party's recording device will not be allowed to delay the hearing; (4) Unless otherwise ordered, the party's audio recordings, and any transcripts thereof, shall remain in the sole possession and custody of counsel for that party; (5) Unless otherwise ordered, the audio recordings, or any transcripts thereof, shall not be made available to the public, they shall not be made available online, and they shall not be published to any person who is, or who is expected to be, a witness in the case.

If Student desires to make an audio recording, Student shall move for leave to do so in advance of the hearing, and the same conditions shall apply.

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 remains the petitioning party after remand. Accordingly, Student shall present her case-in-chief first.

9. Motions. Except as are mentioned elsewhere in this Order, no pretrial motions are pending or contemplated. Any motion filed after February 13, 2017, 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 PHC of February 13, 2017.

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 placed on the vibrate setting during the hearing unless permission to the contrary is obtained from the ALJ. There shall be no texting or tweeting during the hearing unless the ALJ grants permission. There shall be no weapons in the hearing room, except as may be borne by duly authorized law enforcement personnel.

13. Special Needs and Accommodations. No party has requested interpretation services. 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/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 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.

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

IT IS SO ORDERED.

DATE: February 15, 2017

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Peter Paul Castillofor
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ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings