BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. GLENDALE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015100106 ORDER FOLLOWING PREHEARING CONFERENCE

On January 8, 2016, a telephonic prehearing conference was held before Administrative Law Judge Clifford H. Woosley, Office of Administrative Hearings. Mark Woodsmall, 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 **January 26, 27, and 28,** 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, Room 206B, Glendale, CA 91206**.

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 five calendar 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. 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. Issues and Proposed Resolutions.

The issues at the due process hearing are:

1. Did District deny Student a free appropriate public education by failing to assess her in all areas of known or suspected disability, in the areas of:

    a. psycho-education,
    b. behavior,
    c. educationally related mental health services,
    d. and/or social skills?

2. Did District deny Student a FAPE for the 2013-2014 and 2014-2015 school years by:

    a. Offering educational placements that were not reasonably calculated to provide Student a FAPE?
    b. Proposing deficient programs that were not based upon research-based interventions?
    c. Failing to place Student in an environment that was free of harassment and bullying?

3. Did District commit procedural violations by failing to state accurate present levels of performance and craft appropriate and measurable goals in Student's individual educational programs for the 2013-2014 and 2014-2015 school years and, if so, did such procedural violations deny Student a FAPE?

4. Did District fail to provide adequate prior written notice in response to Parent's February 2015 request regarding Student's residential treatment placement that impeded Parents' right to participate in the IEP process and, if so, did such procedural violation deny Student a FAPE?

Student proposes the following remedies:

1. An appropriate placement to meet Student's needs, including a

residential treatment center with a small, highly-structured environment, including reimbursement and compensatory education.

2. District shall fund the following independent educational evaluations:

    a. educationally related mental health services assessment;
    b. social skills;
    c. psycho-educational;
    d. functional behavioral assessment;

3. District shall reimburse Parents for tuition for New Haven Residential Treatment Center since February 2015.

4. District provide compensatory services and reimbursement for:

    a. Social skills training;
    b. Parent and family counseling;

5. Development of appropriate IEP.

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 shall exchange exhibits at least five business days before the first day of hearing (Ed. Code, § 56505, subd. (e)(7)), which is **January 19, 2016**. At the hearing, each party shall supply two exhibit binders containing its exhibits for use by the ALJ and 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. 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.

Student identified "Heritage Staff" as Witness 15 in its PHC statement witness list. Student shall identify the person it intends to call from Heritage and include the witness's name in its witness list, which shall be exchanged by January 19, 2016

The parties are ordered to meet and confer by **January 22, 2016**, 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 District shall have witnesses available in case agreement on a witness list is not reached.

Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for direct and cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. 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.

District moves that witnesses Brian McElligott and Elizabeth Harwood be permitted to testify telephonically because they are both employees of New Haven Residential Treatment Center, located in Saratoga Springs, Utah. The motion is granted.

Student moves that witness Kierstin Cabalka be permitted to testify telephonically because she is a former District employee who now resides in another county. Both Student and District have identified Ms. Cabalka as a witness. The motion is granted.

7. Electronic Recording of Hearing.

a. Audio Recording. The parties jointly moved that they be permitted to make an audio recording of the hearing. Their request is granted, subject to the following conditions: 1) that OAH's recording is the only official recording; 2) that a party's 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; and 3) that operation of the party's recording mechanism will not be allowed to delay the hearing. A party's recording of the hearing may not be played for any witness and is for the sole use of the party, representative, and/or attorney.

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 petitioner. Accordingly, Student shall present its case-in-chief, followed by District.

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 January 8, 2016.

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 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

14. Hearing Closed To the Public. The hearing is 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: January 8, 2016

/s/
CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings