BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SACRAMENTO CITY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016090346 ORDER FOLLOWING PREHEARING CONFERENCE, CONTINUING ALL DATES, AND SETTING PREHEARING CONFERENCE AND HEARING DATES

On April 3, 2017, a telephonic prehearing conference was held before Administrative Law Judge Theresa Ravandi, Office of Administrative Hearings. Richard Ruderman, Attorney at Law, appeared on behalf of Parent and Student. Sarah L. Garcia, Attorney at Law, appeared on behalf of Sacramento City Unified School District. The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

1. Student's Motion to Compel Response to Amended Complaint; Briefing Schedule; and Continuance of Prehearing Conference and Hearing Dates.

On March 30, 2017, Student filed a motion to compel Sacramento City to file a response to her amended complaint which was deemed filed on January 20, 2017. Student alleges that Sacramento City filed a response to her initial complaint that did not meet the requirements of 20 U.S.C. § 1415(c)(2)(B)(1)(I), and that it failed to file any response to her amended complaint. Sacramento City plans on filing an opposition to Student's motion and argues that it did respond to Student's initial and amended complaints, and in particular, has provided Student with prior written notices addressing the claims in her first amended complaint.

The Ninth Circuit Court of Appeals recently held that when a district fails to file a timely answer, the ALJ must not go forward with the hearing and shall instead order a response and shift the cost of the delay to the district. (*M.C. v. Antelope Valley Union High School District* (2017 WL 1131821, No. 14-56344, p. 6.) In light of the need to determine whether Sacramento City has provided Student with a legally sufficient response to her amended complaint, the ALJ ordered the parties to comply with a briefing schedule and continued all pending dates.

Sacramento City shall file its opposition to Student's motion by Wednesday, April 5, 2017. Student shall file her reply to Sacramento City's opposition by Friday, April 7, 2017. The parties shall submit full briefing supported by declarations under penalty of perjury addressing the following: whether OAH should order Sacramento City to file a response to Student's amended complaint and bear the burden of the costs of the delay; what costs have been incurred by Student related to the delay in receiving a response; whether OAH should make a finding regarding costs related to the delay and certify the record to a court of competent jurisdiction, or whether OAH should directly award costs related to the delay.

All pending dates are vacated and the matter is set as follows:

Prehearing Conference:	April 17, 2017, at 1:00 p.m.
Due Process Hearing:	April 25, 2017, at 9:30 a.m., April 26-27, 2017, at 9:00 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ.

The hearing shall take place at Sacramento City's District Office located at 5735 47th Avenue, Sacramento, California, 95824. As ordered in the scheduling order, Sacramento City shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 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. **Sacramento City has not yet certified that the facilities used for this case comply with the law, and is ordered to file a written certification with OAH within two days of the date of this order.**

2. Student's Motion for Sanction and to Shift the Burden of Proof. On March 30, 2017, Student filed a motion for sanctions and to shift the burden of proof. OAH will issue a separate order as to Student's motion once Sacramento City has been afforded the opportunity to respond.

3. Other Matters. All other matters relevant to preparing for hearing, including clarification of the issues and identification of witnesses and exhibits, will be addressed at the telephonic PHC on April 17, 2017.

4. 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 PHC and hearing dates. Dates for the PHC and hearing will not be cancelled unless Student withdraws her case or otherwise requests dismissal, or unless otherwise ordered.

IT IS SO ORDERED.

DATE: April 3, 2017

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Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings