BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENTS ON BEHALF OF STUDENT,	OAH CASE NO. 2013051091
v.	ORDER FOLLOWING PREHEARING CONFERENCE
SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT.	

On March 24, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Elsa H. Jones, Office of Administrative Hearings (OAH). Eric Menyuk and Alexis Casillas, Attorneys at Law, appeared on behalf of Parents and Student (collectively, Student). Sundee M. Johnson, Attorney at Law, appeared on behalf of Santa Monica-Malibu Unified School District (District). The PHC was recorded.

Based on discussion with the parties, the ALJ issues the following Order:

1. Hearing Dates, Times, and Location. The hearing shall take place on April 2, 3, 7, and 8, 2014, and continuing day to day thereafter, Monday through Thursday as needed, at the discretion of the ALJ. Unless otherwise ordered, the first day of hearing shall begin at 9:30 a.m., and all subsequent hearing days shall begin at 9:00 a.m.

The hearing shall take place at the District's offices located at 1651 16th Street, Santa Monica, California 90404. 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 to be heard at the due process hearing are listed below.

A. Did the individualized education plan (IEP) of May 25, 2011 deprive Student of a free appropriate public education (FAPE) in the least restrictive environment (LRE) by reason of the following:

1. The IEP did not provide Student a sufficient number of courses that met the requirements for admission into the University of California and California State Universities (hereinafter, the A-G Subject Requirements).

2. The IEP offered placement in a self-contained class with a one-to-one aide;

3. The transition plan in the IEP was inadequate and inappropriate because its goal could not be implemented unless Student's curriculum included courses that met the A-G Subject Requirements;

4. The District members of the IEP team predetermined Student's placement by offering only the placement the District had available and not what the Student's unique needs required;

5. The District members of the IEP team predetermined Student's placement by failing to offer a program that included a sufficient number of courses that met the A-G Subject Requirements; and

6. The District members of the IEP team failed to inform Parents that the IEP did not offer a program that included a sufficient number of courses that met the A-G Subject Requirements, and the implications for Student's post-secondary education if the IEP did not include such courses.

B. Did the IEP of April 24, 2012 deprive Student of a FAPE in the LRE by reason of the following:

1. The IEP did not provide a sufficient number of courses that met the A-G Subject Requirements;

2. The IEP offered placement in a self-contained class;

3. The IEP discontinued Student's one-to-one aide, but did not provide Student any replacement support in the classroom; such as real-time captioning (CART) services;

4. The transition plan in the IEP was inadequate and inappropriate because its goal could not be implemented unless Student's curriculum included courses that met the A-G Subject Requirements;

5. The District members of the IEP team predetermined Student's placement by offering only the placement the District had available and not what the Student's unique needs required; and

6. The District members of the IEP team predetermined Student's placement by failing to offer a program that included a sufficient number of courses that met the A-G Subject Requirements.

C. Did the IEP of June 12, 2013, deprive Student of a FAPE in the LRE by reason of the following:

1. The IEP did not include a sufficient number of courses that met the A-G Subject Requirements.

2. The IEP offered Student placement in a self-contained class;

3. The IEP offered insufficient supports in the classroom to replace Student's one-to-one aide, such as CART services;

4. The transition plan in the IEP was inadequate and inappropriate because its goal could not be implemented unless Student's curriculum included courses that met the A-G Subject Requirements;

5. The District members of the IEP team predetermined Student's placement by offering only the placement the District had available and not what the Student's unique needs required; and

6. The District members of the IEP team predetermined Student's placement by failing to offer a program that included a sufficient number of courses that met the A-G Subject Requirements.

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 stamp or other similar method, commencing with the first page of the first exhibit and ending with the last page of the last exhibit. Each exhibit binder shall contain a detailed table of contents. The parties shall serve their final exhibit lists and evidence binders on each other, and file their final exhibit lists with OAH, all in conformity 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.

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. 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. During the hearing, the parties shall keep the ALJ and each other apprised of the witness schedule. The parties shall be prepared at all times throughout the hearing to discuss the witnesses to be presented the next day and the amount of time the testimony of each such witness is expected to take.

The following witnesses for Student are scheduled to testify on the following dates and times:

Brandon Martinez--April 2, 2014
Jackie Strumwasser—April 3, 2014, at 9:00 a.m.
Rebecca Joseph—April 7, 2014

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. The parties should anticipate that, except for purposes of rebuttal or impeachment, witnesses who are listed on both parties' witness lists will only be permitted to be called to testify once.

5. Scope of Witness Examination. 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.

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. Prior to the time each such witness is to testify, Student shall provide each such witness with a complete set of exhibit binders from all parties, containing all of each party's exhibits, 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. Each such witness shall testify using a landline telephone, and shall be alone in a private room while testifying. No witness will be heard by telephone unless all of these requirements have been fulfilled.

7. Motions. At the PHC, Student requested to record the hearing. This request has been taken under submission and will be ruled upon on the first day of hearing. At the PHC, Student also moved that Sara Woolverton, the District's Director of Special Education, be called as the first witness at the hearing, or, in the alternative, be excluded from the

hearing until she was called to testify. This motion is denied. Subsequent to the PHC, District filed motions to quash subpoenas duces tecum. Those motions will be ruled upon in a separate Order. No other pretrial motions are pending or contemplated. Any motion filed after the date of this PHC Order 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 March 24, 2014.

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

9. 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 permission to the contrary is obtained from the ALJ.

10. Compensatory Education/Reimbursement. Any party seeking reimbursement of expenditures shall present admissible evidence of these expenditures, or a stipulation as 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. Special Needs and Accommodations. At present, no party anticipates the need for any special accommodations or for interpreter services.

12. Hearing Closed To the Public. Student has not requested that the hearing be open to the public. In the absence of such request, the hearing shall be closed to the public.

13. Settlement. The parties are encouraged to continue working together to reach a settlement 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.

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

IT IS SO ORDERED.

DATE: March 26, 2014

/s/

ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings