BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: WILLIAM S. HART UNION HIGH SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2019010586 ORDER FOLLOWING PREHEARING CONFERENCE

On February 4, 2019, a telephonic prehearing conference was held before Administrative Law Judge Robert G. Martin, Office of Administrative Hearings. Attorney Ian Wade appeared on behalf of William S. Hart Union High School District. Student did not appear. Neither Parents, nor an attorney, have filed a response to Hart's complaint or otherwise formally appeared in this matter. Parents have communicated telephonically with OAH staff, most recently on January 31, 2019, when they called staff to request a copy of Hart's PHC statement, which staff then sent to Parents the same day. The ALJ on February 4, 2019 attempted twice to reach Parents at their telephone number on file, but in each instance reached a recording stating that the phone number was no longer in service. At the PHC, District's attorney stated that he and District did not have any alternate phone numbers for Parents, and also had been unable to reach Parents via email within the last week.

Hart filed a PHC statement. Student did not file a PHC statement. Based on discussion at the PHC, the ALJ issues the following order:

1. Hearing Dates, Times, and Location. The hearing shall take place on February 12, 13, and 14, 2019, and continue day to day thereafter at the discretion of the ALJ. The hearing shall take place at William S. Hart Union High School District, 21380 Centre Pointe Parkway, Santa Clarita, CA 91350. The hearing will commence at 9:30 a.m. on February 12, 2019, and at 9:00 a.m. on all other days, unless otherwise ordered.

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.

As ordered in the scheduling order, Hart 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. Hart has certified that the facilities used for this case comply with the law. Hart shall inform OAH within two days of the date of this order if it is unable to comply with this order.

Prior to the beginning of the hearing, Hart 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 Hart's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. Hart 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. Hart shall ensure that the hearing room and access to it comply 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. Hart's Issue and Proposed Resolution. Hart's issue to be resolved at the due process hearing, as alleged in the complaint and clarified by the parties and the ALJ at the PHC, is:

(1) Did Hart offer Student a free appropriate public education in his April 17, 2018 individualized education program, as amended August 10, 2018?

Hart's Proposed Resolution. A decision finding that Hart offered Student a free appropriate public education in his April 17, 2018 individualized education program, as amended August 10, 2018.

3. Timely Disclosure of Exhibits and Witnesses. Education Code section 56505, subdivision (e)(7), requires each party to disclose, at least five business days prior to the hearing, a list of all witnesses and their general area of testimony that the parties intend to present at the hearing, and a copy of all documents, including all assessments completed by that date and recommendations based on the assessments, that the parties intend to use at the hearing. The parties shall exchange copies of their final witness lists and exhibit binders on or before 5:00 p.m. on Tuesday, February 5, 2019. Except for good cause shown, witnesses and documents not disclosed by 5:00 p.m. on January 8, 2019 may be excluded at the request of the other party from introduction at the hearing. Each party reserves the right to present additional witness and documents for purposes of rebuttal or impeachment.

4. Exhibits. At the PHC, Hart identified eight exhibits and one category of exhibits that Hart intends to present at hearing.

Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. Each exhibit binder shall contain a detailed table of contents. Student shall mark Student's exhibits using the numbers S1, S2, S3, etc., Hart shall mark its exhibits using numbers D1, D2, D3, etc. Each party shall either internally paginate each of its exhibits, or sequentially bates-stamp all of its exhibits. The parties shall place a single exhibit behind each binder tab, except where it would be more efficient at hearing to have category of documents behind a single tab; as with, for example, resumes organized alphabetically, receipts, or email strings on a single subject, and shall place the exhibits in chronological order, generally.

Each party will include in its exhibits current resumes of its expert witnesses, and current resumes of any of its percipient witness whose education and employment may be subjects of direct examination. Documents offered as evidence to support a request for reimbursement must be separated by vendor and should be internally chronological where possible. The party offering any audio recording of an IEP meeting must transcribe the relevant portions of the recording, and include the transcript as an exhibit. Any person may prepare the transcript, which must be accurate, and note any uncertainty regarding the words being transcribed. A party offering an IEP shall attach all pages of the IEP, including copies of all actual signatures on the IEP, and any typewritten or handwritten notes or comments written on the IEP.

At the hearing, in addition to its own copy of its exhibits and the copy exchanged with the other party, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and an exhibit binder for use by witnesses (i.e., each party should make at least an original and three copies of its exhibits to exchange, and to use at the hearing). 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.

5. Witnesses. At the PHC, Hart identified 20 named percipient witnesses, and one expert witness, whom Hart intends to present at hearing. Each party is responsible for procuring the attendance at hearing of its own witnesses. Hart agreed to make witnesses under its control reasonably available to Student without the need for subpoena. By 5:00 p.m. on Wednesday, January 9, 2019, Hart will also inform Student of the identity of, and available contact information (including last known address), any witness identified by Student as an employee of Hart who has left Hart's employ. The parties will 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.

6. Meet and Confer Regarding Witnesses. The parties are ordered to meet and confer on or before 5:00 p.m. on Friday, February 8, 2019, regarding the schedule of witnesses for the hearing. If provided contact information by Parents, Hart's counsel for the hearing will place a telephone call to Parents to initiate the meet and confer. The parties shall coordinate the availability and order of testimony of witnesses to ensure that there is a

witness available to testify at all times during the hearing, and to ensure that the hearing is completed as scheduled. The parties shall discuss a time estimate of the length of each witness's direct examination testimony, and identify those witnesses the party intends to call, as opposed to witnesses the party may call, depending on the flow of the hearing and the evidence.

The parties are encouraged to review and shorten their witness lists prior to the hearing, bearing in mind that the ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony, and evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear.

The parties shall attempt to reach agreement on a witness list for the first day of hearing. Hart shall have witnesses available in case agreement on a witness list is not reached. On the first day of hearing, before the first witness testifies, the parties shall provide the ALJ with a joint, written, hour-by-hour schedule of all witnesses expected to testify at the hearing. The list shall include an estimate of time for each party's direct and cross-examination. The ALJ and the parties will review the expected duration of direct and cross-examination of each witness, and discuss any scheduling issues for individual witnesses before finalizing the expected witness schedule. The parties shall be prepared at the end of each day of hearing to discuss the witnesses for the next day, and the time the testimony of each such witness is expected to take. The parties shall meet and confer each day of hearing to revise the witness schedule as needed, and provide a revised written copy of the schedule to the ALJ at the start of each hearing day.

7. 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. The order in which the parties present their cases in chief shall be subordinate to the need for each witness to appear only once.

8. Telephonic Testimony. Hart did not request that any witness appear telephonically. 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 witness testifies from a private location with no other persons present, on a landline or by other means allowing a clear two-way connection. The hearing room shall have 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.

9. Electronic Recording of Hearing. Hart did not request leave to make an audio recording of the hearing. Such requests, when made and granted, are subject to the following conditions: (1) OAH's recording is the only official recording; (2) the 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; (3) operation of the party's recording mechanism will not be allowed to delay the hearing; (4) the recording shall not be played or published for a prospective witness; (5) the recording shall not be used for any purpose other than assisting in the representation and presentation of this due process hearing; (6) the parties shall erase, or otherwise destroy, the recording after the hearing and all opportunities for appeal from any decision herein has been exhausted; and (7) the parties shall not use this recording in any subsequent due process hearing.

a. 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.

10. 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, 62 [126 S.Ct. 528, 163 L.Ed.2d 387].) Here, Hart is the petitioning party. Accordingly, Hart shall present its case-in-chief, followed by Student.

11. Motions. Hart indicated it was not contemplating any prehearing motions. In the event that any motion, other than a challenge to a newly-assigned ALJ for the hearing, is brought after this date, it 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.

12. 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.

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

14. 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.

15. Special Needs and Accommodations. Hart did not request any accommodations. A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk at (916) 263-0880, the OAH ADA Coordinator at OAHADA@dgs.ca.gov or 916-263-0880 as soon as the need is made known. Additional information regarding reasonable accommodations is available on OAH's website at https://www.dgs.ca.gov/oah/Home/Accessibility.aspx.

16. Hearing Closed to the Public. The hearing will be closed to the public.

17. 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 3:00 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 FILE THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE WITH OAH. (See instructions at http://www.dgs.ca.gov/oah/Home/SecureFileTransfer.aspx.)

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.

18. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: February 5, 2019

DocuSigned by:

ROBERT G. MARTIN
Administrative Law Judge
Office of Administrative Hearings