BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: OAKLAND UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT,	 OAH Case No. 2017030950
PARENT ON BEHALF OF STUDENT, v. OAKLAND UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017050146 ORDER FOLLOWING EXPEDITED PREHEARING CONFERENCE

On August 31, 2017, a telephonic prehearing conference was held before Administrative Law Judge Theresa Ravandi, Office of Administrative Hearings. David Mishook, Attorney at Law, appeared on behalf of Oakland Unified School District. Nicole Hodge Amey, Attorney at Law, appeared on behalf of Parent and Student. Parent was also present. The PHC was recorded.

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

1. Status of Student's Legal Representation. The ALJ contacted Parent and included her at the start of the PHC because Parent had informed OAH staff that she was no longer represented. On August 30, 2017, and again on August 31, 2017, Ms. Hodge Amey filed a PHC statement in this matter on behalf of Student. At the start of the PHC the ALJ asked Parent if Ms. Hodge Amey continued to represent her and Student in the expedited and non-expedite due process matters. Parent stated that Ms. Hodge Amey did continue to represent her and Student. Ms. Hodge Amey confirmed this as well. OAH continues to recognize Ms. Hodge Amey as the legal representative for Parent and Student unless informed otherwise.

2. Hearing Dates, Times, and Location. The hearing shall take place at OAH's Oakland office located at 1515 Clay Street, Suite 206, Oakland, California, 94612, on

September 7, 2017, at 9:00 a.m.[1] In the event this matter requires more than one hearing day, the ALJ and the parties will discuss the scheduling of a second day for hearing.

The parties shall immediately notify all potential witnesses of the hearing date, 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.

3. Issues and Proposed Resolutions. The issue at the due process hearing, and the proposed resolutions, are listed below.[2]

Issue: Does Oakland's proposed placement at Highland Academy in the Hayward Unified School District constitute an appropriate interim alternative educational setting for Student in accordance with the criteria set forth in OAH's August 23, 2017 expedited decision in this matter?

Proposed Resolution: Oakland seeks an order that Highland Academy constitutes an appropriate interim alternative setting for Student for not more than 45 school days.

4. 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. There shall only be one document or a short series of related documents per each exhibit tab. Oakland shall include a color copy of the 2017-2018 academic calendar applicable to Student, and shall have a witness available to testify as to any legend notations that might be unique to Oakland. Each exhibit binder shall contain a detailed table of contents. The parties shall serve their evidence binders on each other by close of business August 31, 2017, unless they agree otherwise. Student's request for an extension until September 6, 2017, the day prior to hearing, to submit her evidence binder to Oakland was denied. 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.

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[1] Student's Counsel is currently scheduled for a telephonic federal court appearance at 9:00 a.m., on September 7, 2017. If this telephonic appearance remains on calendar, Student's Counsel will be afforded a 30-minute recess. Student's Counsel shall inform Oakland on September 6, 2017, by 4:00 p.m., if this conflict remains so that witness scheduling may be timely adjusted.

[2] As specified in the August 23, 2017 Expedited Decision Order, Student will be afforded the opportunity to present limited evidence as to an appropriate alternate placement. Student has identified Big Mind Unschool as an alternate interim placement.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not timely exchanged shall not be admitted into evidence at the hearing unless the ALJ rules that it is admissible.

5. 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 timely disclosed except for good cause shown and at the discretion of the ALJ. **The parties are encouraged to present resumes for all witnesses testifying in their professional capacity.**

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 ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony, to ensure that this matter is concluded within the time allotted, based upon the parties' time estimates as well as on the issue presented. Each party may request an offer of proof as to the relevance of any witness called to testify.

The parties shall attempt to reach agreement on a witness scheduled for the hearing. Oakland 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.

6. 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.

7. 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. 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; OAH 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.

Student's motion to have Dr. Hayes, the Director of Big Mind Unschool, and Dr. Frugé, a possible expert witness, testify telephonically is granted. Student shall provide these

witnesses with a complete exhibit binder from each party, containing all of each party's exhibits prior to testifying.

8. 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) that OAH's recording is the only official recording; 2) that 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; and 3) that operation of the party's recording mechanism will not be allowed to delay the hearing. Oakland may also audio record the hearing subject to the above requirements.

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.

9. 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, Oakland is the petitioning party. Accordingly, Oakland shall present its case-in-chief, followed by Student.

10. Motions. Any motion filed after this date 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 August 31, 2017.

11. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ at the time of hearing, in written form and signed by both counsel.

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. 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 https://www.dgs.ca.gov/oah/Home/Accessibility.aspx.

14. Hearing Open To the Public. At the request of Student, the hearing will be open 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: August 31, 2017

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Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings