BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017060552
v.	ORDER FOLLOWING PREHEARING CONFERENCE
THE NEW SCHOOL OF SAN FRANCISCO.	

On October 13, 2017, a telephonic prehearing conference was held before Administrative Law Judge June R. Lehrman, Office of Administrative Hearings. Mother appeared on behalf of Student. Lisa Corr, Attorney at Law, appeared on behalf of the New School of San Francisco (School). The PHC was recorded.

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

1. Hearing Dates, Times, and Location. **The hearing shall take place on October 17-19, 2017, and continuing day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at 940 Howard Street, San Francisco CA 94103. The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 a.m. all other days, unless otherwise ordered, and shall conclude at 5:00 p.m.**

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 two 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, School shall assist the ALJ to ensure that the hearing room is configured into a courtroom setting, including (1) a table for Student and his representatives; (2) a table for School's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. School shall also make reasonable effort to ensure that drinking water and tissue are available to all parties, witnesses and the ALJ.

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. School's Response to Student's Due Process Complaint. State and federal law require a local education agency to respond to a due process complaint. (Ed. Code, §56502, subd. (d)(2)(A); 20 USC § 1415(c)(2)(B)(i)(I); 34 C.F.R. § 300.508.); *M.C. by and through his guardian ad litem M.N. v. Antelope Valley Union High School School* (9th Cir.2017) 858 F.3d 1189, 1199-1200.) **School did not file a response to Student's due process complaint with OAH. Accordingly, School shall file with OAH either a response to Student's due process hearing request or a declaration attaching prior written notice that was sent to Parent regarding the subject matter contained in Student's due process complaint, no later than Monday October 16, 2017.**

3. Issues and Proposed Resolutions. The issues at the due process hearing, and the proposed resolutions, are listed below.

1) Did School deny Student a free appropriate public education during the 2016-2017 school year by failing to provide a safe and secure place for Student to calm down?

2) Did School deny Student a FAPE by removing transportation from Student's individualized education program?

3) Did School deny Student a FAPE during the 2016-2017 school year by failing to provide Student with behavior support to ensure Student is not removed from class, or that his classroom is not evacuated when he has a tantrum?

4) Did School deny Student a FAPE during the 2016-2017 school year by failing to provide homework for Student?

5) Did School deny Student a FAPE during the 2016-2017 school year by failing to provide Parent with complete information regarding behavior incidents therefore impeding her ability to participate in the IEP process?

4. Exhibits. **Mother did not timely exchange any proposed documentary evidence. After discussion on the record concerning a possible continuance to enable her to do so, Mother elected to proceed on the currently scheduled dates but to be limited to using only those Exhibits that have already been timely exchanged by School in School's exhibit binder**. School's Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. School shall use numbers to identify exhibits, but shall place the letter "D" in front of the exhibit to designate it is a School exhibit. Each exhibit shall be internally paginated by exhibit, or Bates-stamped. The exhibit binder shall contain a

detailed table of contents. School served its evidence binder in compliance with Education Code section 56505, subdivision (e)(7). At the hearing, School shall supply an exhibit binder containing its exhibits for use by the ALJ, and a second exhibit binder for use by witnesses.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not included in the exhibit list 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.

5. Witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses. **School stated on the record that except for Father, it will make available each of the witnesses on the witness list Mother provided in her October 5, 2017 Prehearing Conference Statement. 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.**

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 witnesses shall be called in the order stated on the witness list Mother provided in her October 5, 2017 Prehearing Conference Statement, with exceptions for witness availability. At the 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. Additionally, 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.

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, 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.

School's motion to allow Robin Detterman to testify telephonically is granted. School shall provide the witness with a complete set of 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.

8. Electronic Recording of Hearing.

a. Audio Recording. Either party may make an audio recording of the hearing with the permission of the ALJ and subject to the following conditions: (1) Such recording shall be for counsel's personal use only and only for review and preparation of the hearing; (2) The recording device shall be turned on only when the ALJ states that the matter is on the record, and shall be turned off when the ALJ states that the matter is off the record; (3) Operation of a personal recording device will not delay the hearing; (4) The parties shall not play any part of the recording for any prospective witness(es) and the recording shall not be disseminated; (5) The parties shall not use the recording in any subsequent due process hearing; and (6) The recording is subject to the same confidentiality as the due process hearing. Any recording made by either party is not the official record and is permitted as a courtesy, unless otherwise ordered by the hearing ALJ. The OAH recording made by the hearing ALJ is the official record unless otherwise ordered.

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

10. Motions.

1) School's motion for a change of hearing location is granted. **The hearing shall take place at 940 Howard Street, San Francisco CA 94103.**

2) For the reasons stated on the record at the October 13, 2017 Prehearing Conference, the matter is not dismissed pursuant to the October 10, 2017 Order to Show Cause re Dismissal for Failure to Prosecute. The matter will proceed. Mother established adequate reasons for her failure to appear at the October 6, 2017.[1]

[1] **On October 11, 2017 Mother filed a Response to the October 10, 2017 Order to Show Cause. Mother did not provide School with a copy of that document. Mother is**

3) For the reasons stated on the record at the October 13, 2017 Prehearing Conference, the relief sought by School's October 13, 2017 Request for an Order to Show Cause Why Petitioner Has Not Produced or Exchanged Evidence in Preparation for Hearing is denied. **After discussion on the record concerning a possible continuance, Mother elected to proceed on the currently scheduled dates and to be limited to using only those Exhibits that have already been timely exchanged by School in School's exhibit binder.**

Mother was under the impression that the hearing days would last only until 1:00 p.m. each day. Based on this misunderstanding she may bring a motion to continue the hearing, if she is unable to take the full days of October 17-19, 2017 off work.

No other pretrial motions are pending or contemplated. 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.

11. 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.

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

13. 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.

14. Special Needs and Accommodations. **Mother requested child care for the hearing. The ALJ directed School to investigate the availability of child care at the hearing location it has selected.**

A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the mediation or hearing may contact the assigned calendar staff, identified in the scheduling order, at (916) 263-0880, as soon as the need is

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directed in the future to provide School with a copy of any document she files with OAH.

known. Additional information concerning requests for reasonable accommodation is available on OAH's website at https://www.dgs.ca.gov/oah/Home/Accessibility.aspx.

15. Hearing Closed To the Public.

16. 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 EMAIL THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT https://www.dgsapps.dgs.ca.gov/oah/oahsftweb .

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.

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

IT IS SO ORDERED.

DATE: October 12, 2017

DocuSigned by:
June Lehrman
[illegible]

JUNE LEHRMAN
Administrative Law Judge
Office of Administrative Hearings