BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: GLENDORA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2018110712 ORDER FOLLOWING PREHEARING CONFERENCE

On May 24, 2019, a telephonic prehearing conference was held before Administrative Law Judge Clifford H. Woosley, Office of Administrative Hearings. Lyndsey M. Wrape, attorney at law, appeared on behalf of Glendora Unified School District. Mother appeared on behalf of Student. 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 **June 4, 5, and 6, 2019**, and continue day to day, at the discretion of the ALJ, beginning at **9:30 AM** the first day of hearing and at **9:00 AM** all other days, unless otherwise ordered. The hearing shall take place at **Glendora USD, 500 N. Loraine Avenue, Glendora, CA 91741.**

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.

The scheduling order directed the named local educational agency to certify that it would 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. Glendora Unified has certified that it would provide a facility for this case that complies with the law.

Prior to the beginning of the hearing, Glendora Unified 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 Glendora Unified's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. Glendora Unified shall also make reasonable effort to ensure that drinking water and tissue are available to all parties, witnesses and the ALJ.

2. Issue.

(1) Did Glendora Unified's offer of placement and services at Student's February 27 and June 12, 2018 individualized education program team meetings, and amendment IEP's of August 24, 2018 and December 17, 2018, provide Student with a free appropriate public education in the least restrictive environment?

Proposed Resolutions and Orders:

(a) Glendora Unified's February 27 and June 12, 2018 individualized education program team meetings, and amendment IEP's of August 24, 2018 and December 17, 2018, constituted a FAPE for Student in his least restrictive environment.

(b) Glendora Unified may implement the February 27 and June 12, 2018 IEP, as amended, without Parental consent.

(c) If Mother continues to seek FAPE from Glendora Unified on behalf of Student, she must participate in an IEP meeting within 30 days of issuance of a decision in this due process matter to discuss Student's social/emotional functioning and ability to attend school.

(d) If Mother continues to seek FAPE from Glendora Unified on behalf of Student, she must make Student reasonably available for assessment.

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 if it is a Student or Glendora Unified 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. Each exhibit shall be separately identified, with a tabbed divider. Each exhibit binder shall contain a detailed table of contents. The parties are to serve their evidence binders on each other by close of business, **May 28, 2019**, five days before the commencement of the hearing, in compliance with Education Code section 56505, subdivision (e)(7).

Glendora Unified's exhibits shall include its school calendar for all school years that are related to the issues herein.

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 shall not serve

exhibits on OAH prior to the hearing. In the event of duplicate exhibits, the most legible version will be used.

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

4. 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 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.

Each party shall provide current curriculum vitae or resumes for witnesses called to testify where the witnesses' education and experience are relevant to the witnesses' testimony, opinion, credibility and/or persuasiveness. These shall be properly numbered and placed in the parties' exhibit binders.

Glendora Unified's Motion for an Order to Show Cause is Denied, Without Prejudice:

On May 23, 2019, Glendora Unified filed a Motion for an Order to Show Cause regarding Student's witnesses. Mother contacted Glendora Unified's attorney, identified additional witnesses Student intended to call at the hearing who were not listed in Student's previously filed prehearing conference statement, and inquired if Glendora Unified would produce the witnesses for hearing. Glendora Unified seeks an order to show cause directing Student to make a showing of why it should produce the newly listed witnesses, contending that they cannot offer relevant testimony. Student's Mother filed a response to the motion on May 23, 2019. Mother failed to provide a proof of service of the response upon Glendora Unified; however, Ms. Wrape acknowledged receipt of Student's response and Mother has since filed a proof of service.

Student's proposed additional witnesses included: Superintendent Dr. Robert Voors; Goddard Middle School health clerk Patricia Jeckyll; and five members of Glendora Unified's governing school board. Glendora Unified contends that the additional witnesses were not related to or involved with the development of Student's FAPE offer and cannot provide testimony relevant to the issue herein. Therefore, Glendora Unified seeks an order that it does not have to produce the witnesses.

The five members of Glendora Unified's school board are not district employees and under the control of Glendora Unified. The motion is denied, without prejudice, as to these five proposed witnesses because Glendora Unified is not under an obligation to make those

witnesses available. Glendora Unified maintains the right to objectif Student subpoenas any of these five board meetings to testify at hearing.

The motion is denied, without prejudice, as to Ms. Jeckyll. Student asserted that Ms. Jeckyll observed Student go to the nurse's office on multiple occasions and has relevant testimony regarding Student's poor attendance, which Student contends is not properly addressed in the FAPE offer. Glendora Unified may object at hearing, because admissible evidence is necessary before an informed relevancy determination. Glendora Unified needs to be prepared to produce Ms. Jeckyll at hearing if her testimony is found to be relevant.

The motion is denied without prejudice as to Mr. Voors. Typically, a superintendent is not involved in fashioning or implementing a child's IEP. Here, Mother stated that Mr. Voors is the head of the attendance review board and that Mr. Voors signed a letter sent to Mother stating that the review board found Student to be a "habitual truant." On occasion, an attendance review board's actions trigger some special education processes (such as a manifestation determination). Therefore, admissible evidence regarding the attendance review board's actions is necessary for an informed ruling. Glendora Unified may object to Student's calling of Mr. Voors at hearing and present evidence demonstrating that his testimony is not relevant. Glendora Unified needs to be prepared to produce Mr. Voors at hearing if his testimony is found to be relevant.

The parties are ordered to meet and confer by **May 31, 2019**, to reach agreement on an hour-by-hour witness schedule for the first day of hearing. The parties shall have a proposed hour-by-hour witness schedule for the remainder of the hearing, which includes estimated time of direct and cross-examination by both parties. 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. 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 witness is expected to take. Glendora Unified shall have witnesses available in case agreement on a witness list is not reached.

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.

Student shall identify the Glendora Unified employee witnesses who he intends to call to testify at hearing by close of business, **May 28, 2019**. Glendora Unified will then notify Student of any identified witness, who is no longer employed by Glendora Unified, along with the witness's most recent residential address, by close of business, **May 29, 2019**.

5. 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.

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).) In the event that telephonic testimony is requested, the party seeking to present a witness by telephone shall move in advance for leave to do so. Any motion filed shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not timely made three days prior to the prehearing conference, unless the opposing party has stipulated that the witness may appear by telephone. Prior to the hearing, the proponent of the witness shall provide the proposed witness with a complete set of exact physical copies of the exhibit binders from all parties, containing all of each party's exhibits and shall instruct the witness not to remove any documents from the exhibit binders. Faxed or electronic copies are unacceptable. Glendora Unified shall ensure that 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. Unless otherwise ordered, the witness shall testify on a land-line telephone while alone in a private room. No witness will be heard by telephone unless all these requirements have been fulfilled. Neither party asked for telephonic testimony of a witness.

7. Electronic Recording of Hearing.

a. Audio Recording.

The parties may make an audio recording of the hearing, 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) such recording shall be for counsel's personal use only and only for review and preparation of the hearing; 5) the parties and/or counsel shall not play any part of the recording for any prospective witness and the recording shall not be disseminated to anyone other than counsel; 6) the parties shall not use the recording in any subsequent due process hearing or other proceeding; and 7) the parties shall destroy the unofficial recording upon the earlier of the following: (a) upon settlement of this matter, (b) dismissal of this case, or (c) after the hearing and all opportunities for appeal from any decision has been exhausted.

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.

8. 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, Glendora Unified is the petitioning party. Accordingly, Glendora Unified shall present its case-in-chief, followed by Student.

9. Motions.

Other than Glendora Unified's request for order to show cause, neither party made any additional motions at the PHC. 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 timely made three business days prior to the prehearing conference.

10. 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.

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

12. Conduct of Parties 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 during the hearing unless permission to the contrary is obtained from the ALJ. There shall be no texting permitted while the hearing is in session.

13. Special Needs and Accommodations. A Spanish language interpreter and translator is required. 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, or email the OAH ADA coordinator at OAHADA@dgs.ca.gov, 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. Public Hearing. The hearing will be opened to the public at Student's request.

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 **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 parties settle the matter 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. OAH will not cancel the hearing dates without this information.

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

IT IS SO ORDERED.

DATE: May 24, 2019

DocuSigned by:

3EEE11185C9F48D...

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings