BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. AVESON CHARTER SCHOOLS, AVESON SCHOOL OF LEADERS AND AVESON GLOBAL LEADERSHIP ACADEMY (CHARTER SCHOOLS).	OAH Case No. 2015021006 ORDER FOLLOWING PREHEARING CONFERENCE

On September 18, 2015, a telephonic prehearing conference was held before Administrative Law Judge Laurie Gorsline, Office of Administrative Hearings. Lisa Dennis, Attorney at Law, and Hamlet Yarijanian, Special Education Advocate, appeared on behalf of Student. Michael Ohira, Attorney at Law, appeared on behalf of Aveson Charter Schools, Aveson School of Leaders and Aveson Global Leadership Academy (collectively Charter Schools). The PHC was recorded.

Based on discussion of the parties, the ALJ issues the following order:

1. Notice of Representation. At the PHC, counsel for Respondents was ordered to file and serve a Notice of Representation as to all Respondents by **Monday, September 21, 2015**.

2. Hearing Dates, Times, and Location. The hearing shall take place on **September 29 and 30, and October 6 and 7, 2015,** and will continue day to day, Monday through Thursday as needed at the discretion of the ALJ.

The hearing shall begin each day at 9:00 a.m. with the exception of September 29, 2015, on which day the hearing shall begin at 9:30 a.m., unless otherwise ordered.

The hearing shall take place at **Aveson School of Leaders, 1919 East Pinecrest Drive, Altadena, California 91001**. Charter Schools will ensure that parking is available for Student and his representatives and the ALJ. Charter Schools shall provide facilities that fully comply 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), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.

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.

3. Issues and Proposed Resolutions. The issues, subject to the statute of limitations or an exception to the statute of limitations, are listed below.

Issues for hearing:

(1) Did Aveson Charter Schools, Averson School of Leaders and/or Aveson Global Leadership Academy deny Student a free appropriate public education between September 2011 and the December 2014 individualized education program team meeting by failing to comply with their child find obligations?

(2) Did Aveson Charter Schools and Averson School of Leaders deny Student a FAPE by failing to timely provide Parent's with an assessment plan in response to Parent's fall 2011 request for assessment?

(2) Did Aveson Charter Schools and Aveson School of Leaders deny Student a FAPE by failing to timely complete Student's psychoeducational assessment in response to Parent's fall 2011 request?

(4) Did Aveson Charter Schools and Aveson School of Leaders deny Student a FAPE by failing to conduct an appropriate psychoeducational assessment of Student in February 2012?

(5) Did Aveson Charter Schools and Aveson School of Leaders deny Student a FAPE at the March 22, 2012 IEP team meeting by:

(i) Failing to have all the required members of the IEP team present, specially Student's general education teacher and the school psychologist who conducted Student's assessment?

(ii) Failing to find Student eligible for special education?

Proposed Resolutions: Student seeks the following proposed resolutions:

(1) For Charter Schools to fund the program Seeing Stars and Visualization and Verbalization at Lindamood Bell in Pasadena for 9 weeks, 4 hours per day;
(2) For Charter Schools to fund the program Cloud-9 at Lindamood Bell in Pasadena for 3 weeks.

4. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. Except as permitted herein or otherwise ordered by the ALJ, the parties shall use numbers to identify exhibits, but shall place the letter "S" or "C" in front of the exhibit to designate if it is a Student or Charter Schools exhibit (for example, "S-5, S-6, or C-1, C-2). Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be Bates-stamped. Each exhibit binder shall contain a detailed table of contents.

The parties shall serve their evidence binders on each other in compliance 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.

Each exhibit shall consist of one document; separate documents may not be combined into one exhibit. Exhibits in the exhibit binders shall be in chronological order.

In the event of duplicate exhibits, the most legible version will be used. The parties shall meet and confer **by September 24, 2015** to delete duplicate exhibits from the exhibit binders.

The parties shall exchange resumes for each witness who is expected to testify as to their professional credentials. Notwithstanding the requirements of Education Code section 56505, subd. (e)(7), the parties shall exchange resumes and curriculum vitae not later than **September 22, 2015.**

Charter Schools shall include as part of its exhibits the school calendar(s) for all of the years at issue. Notwithstanding the requirements of Education Code section 56505, subd. (e)(7), Charter Schools shall serve a copy of the school calendar(s) on Student **by September 22, 2015** and include the school calendar(s) in the binders provided for use by the witnesses and the ALJ.

If the parties intend to rely on individualized education programs, the parties shall attach all pages of the IEP(s), including copies of all actual signatures on the IEP(s) and any typewritten or handwritten notes or comments, if any, written on the IEP(s). Excerpts of an audio record of an individualized education program team meeting should be transcribed and offered as documentary evidence; that portion of the audio record transcribed shall be provided to the opposing party with the transcript to allow an opportunity to verify the accuracy of the transcription. Transcriptions need not be prepared by a certified court reporter. All IEPs, audio recordings and transcriptions, shall be exchanged by the parties **by September 22, 2015.**

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 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, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. 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.

The parties shall comply with Education Code section 56505 (e)(7). No party shall be permitted to call any witnesses not timely disclosed except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

The parties shall meet and confer **by September 24, 2015**, as to the schedule of witnesses and coordinate the availability and order 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.

During the PHC, the parties were ordered to meet and confer by **no later than September 23, 2015,** and identify the witnesses on its/his respective witness lists who cannot be produced at hearing without a subpoena and provide the witnesses contact information to opposing counsel so that subpoenas can be issued.

On the first day of hearing before the first witness testifies, the parties shall provide the ALJ with **one joint detailed hour-by-hour schedule** of all witnesses expected to testify at hearing, which list shall also include an estimate of time for each party's direct and cross-examination.

Each witness will only be called once to testify, except for rebuttal purposes, and all parties shall examine the witness when the witness is first called. Charter Schools shall have witnesses available in case agreement on a witness list is not reached. 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 each witness is expected to take.

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 such evidence. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

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 hearing, the proponent of the witness shall provide the proposed witness with a complete set of duplicate exhibit binders from all parties, containing all exhibits from each party, and instruct the witness not to remove any documents from the exhibit binders. 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 made a motion for telephonic testimony. However, Student indicated that it may later make a request for telephonic testimony as to two witnesses in the event that those witnesses are called to testify and/or served with a subpoena and want to appear by telephone. The parties were ordered to meet and confer **by September 24, 2015**, to discuss the necessity of telephonic testimony for specific witnesses and attempt to reach a stipulation. If necessary, the matter shall be addressed by the ALJ on the first day of hearing.

7. 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 his case-in-chief, followed by Charter Schools. If a witness is to be called by more than one party, each party shall ask questions of the witness so that the witness does not need to return for testimony.

8. Motions. At the PHC, Student requested that Charter Schools be required to produce certain documents in response to his request for Student's educational records which Student claimed was served on Charter Schools more than 5 business days prior to September 18, 2015. Student also claimed he subpoenaed certain documents for hearing from Charter Schools. In response, Charter Schools claimed it only just received Student's request and that the subpoena was not directed to Charter Schools.

Parents have the right to request and receive the pupil's educational records within five business days for the request. (Ed. Code, § 56504.) Accordingly, Charter Schools was ordered to produce such "educational records," if any, to Student's counsel by **September 21, 2015** or within 5 business days of receipt of the request. The parties were ordered to meet and confer by **September 23, 2015** regarding any other disputes, if any, concerning the requested documents or the subpoena. All other disputes concerning the documents shall be addressed by motion, prior to or at the hearing.

At present no prehearing motions are pending or contemplated. Any prehearing motion filed after the prehearing conference shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not made prior to or at the prehearing conference.

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

The parties shall meet and confer **by September 24, 2015** to determine legal and factual stipulations, if any, to be submitted at hearing.

10. 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 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.

The ALJ shall record the hearing and the ALJ's recording is the only official record of the hearing. No person shall record or photograph the proceedings unless otherwise permitted by the ALJ.

Student's and Charter Schools' request to audiotape the hearing is granted subject to the following conditions, which shall be applicable to both parties: (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) The parties shall not play any part of the recording for any prospective witness(es) and the recording shall not be disseminated to anyone other than counsel; (4) The parties shall not use the recording in any subsequent due process hearing or other proceeding; and (5) The parties shall dispose of the unofficial recording when the ALJ's decision in this matter is issued. Any recording made by either party is not the official record and is permitted as a courtesy, unless otherwise ordered by the hearing ALJ.

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. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for translation services.

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 or the OAH ADA Coordinator at OAHADA@dgs.ca.gov or (916) 263-0880 as soon as the need is made known. Additional information concerning requests for reasonable accommodation is available on OAH's website at http://www.dgs.ca.gov/oah/Home/Accommodations.aspx.

13. Hearing Open To the Public. At the request of Student, the hearing will be open to the public. With the exception of Parent, Student and Charter Schools' representative, witnesses shall be excluded from the hearing room. Charter Schools shall provide seating for at least 10 observers.

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

14. 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.

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.

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

DATE: September 18, 2015

/s/

LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings