BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. TEHACHAPI UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015050839 ORDER FOLLOWING PREHEARING CONFERENCE

On October 16, 2015, a telephonic prehearing conference was held before Administrative Law Judge Elsa H. Jones, Office of Administrative Hearings. Andréa Marcus, Attorney at Law, appeared on behalf of Parents and Student (collectively, Student). Darren J. Bogié, Attorney at Law, appeared on behalf of the Tehachapi Unified School District. 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 28-29, 2015, and November 3, 4, and 10, 2015, and shall continue day to day thereafter, Monday through Thursday as needed, at the discretion of the ALJ. The hearing shall take place at the District's offices located at 300 S. Robinson Street, Tehachapi, California 93561. Unless otherwise ordered, the hearing shall begin at 9:30 a.m. on October 28, and at 9:00 a.m. on all other days.

District shall 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. Within two business days of the date of this Order, District shall submit a certificate to OAH that the facilities used for this case comply with the law. A certificate form is available on the OAH website.

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 was not properly notified of the hearing date or properly subpoenaed, as applicable.

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

Whether District denied Student a free appropriate public education from April 4, 2014, through the present, by reason of the following:

A. Failing to assess in all areas of suspected disability, specifically the areas of occupational therapy, behavior, and assistive technology;

B. Depriving Parents of the opportunity to meaningfully participate in the development of the April 7, 2014 individualized education program, the June 2, 2014 IEP, and the August 15, 2014 IEP;

C. Failing to provide prior written notice to Parents since the April 7, 2014 IEP team meeting regarding the failure to provide a behavior assessment and assistive technology;

D. Failing to have a general education teacher present at the June 2, 2014, IEP team meeting;

E. Failing to consider the continuum of placements; and

F. Failing to address Student's need for behavior services and speech and language services.

Student's proposed resolutions include (1) funding independent educational evaluations in the areas of psychoeducational, assistive technology, speech and language, and behavior; (2) development of a behavior support plan; (3) a one-to-one behavior aide trained in applied behavior analysis from a nonpublic agency of Parents' choice; (4) door-to-door round-trip transportation between home and school with a driver and aide trained in responding to Student's specific needs; (5) training for Student's Parents, teacher, and aide by a nonpublic agency in applied behavior analysis techniques; (6) a structured social skills program; (7) compensatory education in the form of 180 hours of one-to-one instruction in the core curriculum; and (8) speech therapy to work on functional and pragmatic communication for 20 minutes per day, two times per week on an individual basis, and for 20 minutes per day, three times per week on a group basis.

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 whether 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 consecutively numbered by Bates stamp or similar method, beginning with the first page of the first exhibit and ending with the last page of the last exhibit. Any additional proposed exhibits that may be produced at hearing shall also be tabbed, hole-punched, and paginated as set forth above. Each exhibit

binder shall contain a detailed table of contents. The parties shall serve their evidence binders on each other by no later than 5:00 p.m. on October 21, 2015, 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. In the event of duplicate exhibits, the most legible version will be used.

Unless used solely for rebuttal or impeachment, any exhibit not included in a party's exhibit list and not previously exchanged shall not be admitted into evidence at the hearing at the request of that party, except for good cause shown, and unless the ALJ rules that it is otherwise admissible.

4. Witnesses. The parties shall serve their final witnesses lists on each other by no later than 5:00 p.m. on October 21, 2015, in compliance with Education Code section 56505, subdivision (e)(7). Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available, upon timely request. 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 final witness list except for good cause shown, and at the discretion of the ALJ.

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 ALJ has discretion to limit the number of witnesses who testify and to set the length of time allowed for testimony. The parties are encouraged to review and curtail 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.

Except for parties, and individuals who are serving as representatives of parties for purposes of appearance at hearing, no witnesses will be allowed in the hearing room during the proceedings except when that witness has been called to testify.

The parties shall attempt to reach agreement on a witness list for the first day of hearing. District shall have witnesses available in case agreement on a witness list is not reached. At all times throughout the hearing, the parties shall be prepared to discuss the witness schedule and the time the testimony of each witness is expected to take.

It is strongly preferred that Parents be called to testify as early in the proceedings as possible.

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. 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, at the discretion of the ALJ. 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).) 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; 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 the questions, objections, and rulings. The witness shall testify by means of a landline while alone in a private room. No witness will be heard by telephone unless all these requirements have been fulfilled.

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, Student is the petitioning party. Accordingly, Student shall present his case-in-chief first.

9. Motions. No 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 PHC of October 16, 2015.

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 writing.

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 placed on the vibrate setting during the hearing unless permission to the contrary is obtained from the ALJ. There shall be no texting or tweeting during the hearing, unless the ALJ grants permission. There shall be no weapons in the hearing room, unless they are carried by law enforcement personnel.

13. Special Needs and Accommodations. No party has requested accommodations or interpreter 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 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: http://www.dgs.ca.gov/oah/Home/Accommodations.aspx

14. Hearing Open to the Public. At the request of Student, the hearing will be open to the public. OAH shall be given two business days written notice if media is expected to be present at the hearing.

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 inform OAH of the settlement both in writing and 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 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 or with Education Code section 56505, subdivision (e)(7) may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: October 20, 2015

/s/

ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings