BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. OAKLAND UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015010344 ORDER FOLLOWING PREHEARING CONFERENCE

On April 3, 2015, a telephonic prehearing conference in this matter was held before Administrative Law Judge Adeniyi A. Ayoade, Office of Administrative Hearings. Attorney Karen Watkins appeared on behalf of Student and Parents. Attorney David Mishook appeared on behalf of the Oakland Unified School District. The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing in this matter shall take place at OAH's offices located at **1515 Clay Street, Suite 206, Oakland, CA 94612.** The hearing shall take place on April 13 through 16, 2015, and thereafter day to day, Monday through Thursday as needed, at the discretion of the ALJ. Unless otherwise ordered, the hearing shall begin each day at 9:00 a.m. and end at 5:00 p.m., except for April 13, 2015 when the hearing will begin at 1:30 p.m.

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. Issues and Proposed Resolutions. The issues at the due process hearing are those that were alleged in Student's request for due process hearing (complaint).[1] As necessary, the issues have been clarified and reframed for clarity, as set forth herein below:

1) Did Oakland deny Student a free appropriate public education (FAPE) by committing the procedural violation of failing to have Student's special education teacher at the November 18, 2013 individualized educational program team meeting?

2) From January 9, 2013 to the present, did Oakland deny Student a FAPE by:

   a) failing to provide Student with appropriate educational program and services that were designed to address her deficits in the areas of reading, spelling, writing, math; and

   b) failing to protect Student from bullying and failing to provide her with a safe, secure and peaceful learning environment?

3) During the 2014-2015 school year only, did Oakland commit the following procedural violations which denied Student a FAPE:

   a) failing to conduct a social-emotional assessment of Student following an October 2014 incident involving Student;

   b) failing to provide Parents prior written notice of its refusal to provide counselling services to Student following the October 2014 incident involving Student;

   c) moving Student in October 2014 to another school without providing Parents with prior written notice or obtaining Parents' consent; and

   d) failing to provide prior written notice of its refusal to provide Student with transportation to Roosevelt?

PROPOSED RESOLUTIONS: As proposed resolutions, Student seeks an order finding her the prevailing party, and directing Oakland to: 1) fund independent mental health

[1] Any issue(s) that is not identified in the complaint, and/or permitted by this order, shall be included only upon OAH granting a motion to amend the complaint. All amendments to the complaint shall comply with the requirements of California Education Code section 56502, subdivision (e), and such amendment will restart all applicable timelines for the due process hearing in this matter. (20 U.S.C. § 1415(c)(2)(E)(ii).)

and psychological education evaluations of her, and agree to fund other assessments recommended by those independent evaluators; 2) provide transportation to Student to and from school, and reimburse her Parents to their costs of transporting Student to date; 3) provide Student with compensatory services, by non-public agencies (1:1 academic tutoring, counseling, and other services recommended by the evaluators); 4) provide extended school year services; 5) provide Student with counselling services by a school counselor; and 6) pay all costs incurred by Parents including their attorney's fees.

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 in a way that makes clear the party offering it (such as "S1" or "D2"). Each exhibit shall be internally paginated, by exhibit, or all pages of a party's exhibit binder shall be Bates-stamped or otherwise consecutively numbered. Each exhibit binder shall contain a detailed table of contents. Each party shall serve an exhibit binder containing its respective exhibits on the other party 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.

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 to the other party. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses twice or out of order. A party may not be allowed to call any witnesses not properly disclosed as required by law, except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

The parties are ordered to meet and confer regarding the schedule of witnesses, and prepare a proposed joint or individual witness schedule(s). The proposed witness schedule(s) shall identify the witnesses each party intends to call, as opposed to witnesses a party may call depending on the flow of the hearing and the evidence. Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for their testimony.

5. Scope of Witness Examination. 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, so the parties shall be required to establish their cases in chief during the first appearance of a witness.

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).) A party seeking to present a witness by telephone shall move in advance for leave to do so;; 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. Oakland's motion for telephonic testimony is discussed as follows:

a) Order Granting Motion for Telephonic Testimony. During the prehearing conference, Oakland moved to have Lindsay Maple, Student's previous teacher, testify by telephone because Ms. Lindsay would be out of the country during the hearing. Student did not oppose the motion. Based upon the information presented at the prehearing conference, Oakland's motion to have Ms. Maple testify by telephone is granted. Oakland shall provide Ms. Maple complete set of exhibit binders from all parties, containing all of each party's exhibits, prior to the hearing. OAH will 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.

7. Electronic Recording of Hearing.

a. Audio Recording. The following conditions apply to any recording: 1) OAH's recording is the only official recording; 2) the recorder will be turned on and off at the same time as the ALJ's recording, to avoid recording conversations while off the record; and 3) the operation of the party's recording mechanism will not be allowed to delay the hearing.

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. Timely Disclosure of Witnesses/Exhibits. The parties are to comply with Education Code section 56505, subdivision (e)(7), that provides for disclosure of witnesses and exhibits "at least" five business days prior to the hearing.

9. Order of Presentation of Evidence. Student shall present his case first followed by Oakland. If a witness it to be called by both parties, counsel shall be prepared to ask their questions of the witness – direct and cross so as to prevent the need for the witness to be recalled.

10. Motions. Other than as addressed herein, no other pretrial motion is pending. 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. 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 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. 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.

14. 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 clerk at (916) 263-0880**,** or the OAH ADA Coordinator **at 916-263-0880 or OAHADA@dgs.ca.gov** 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. At present neither party has requested any special accommodation for any witness or party, or for interpreter services.

15. Hearing Closed To the Public. At the request of the parent, the hearing will be 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 **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.

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

IT IS SO ORDERED.

DATE: April 6, 2015

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings