BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: EDUCATIONAL RIGHTS HOLDER ON BEHALF OF STUDENT, v. SAN DIEGO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017100067 ORDER FOLLOWING PREHEARING CONFERENCE

On May 25, 2018, a telephonic prehearing conference was held before Administrative Law Judge Elsa H. Jones, Office of Administrative Hearings. Patricia Lewis, Attorney at Law, appeared on behalf of Educational Rights Holder and Student (collectively, Student). Patrick D. Frost, Attorney at Law, appeared on behalf of San Diego 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. This matter was bifurcated by Order dated November 16, 2017. The hearing on the bifurcated issue specified below shall take place on June 5 through June 7, 2018, and shall continue day to day, Monday through Thursday as needed, at the discretion of the ALJ. The hearing shall take place at the San Diego OAH office, located at 1350 Front Street, Suite 3005, San Diego, California 92101. The hearing shall begin at 9:30 a.m. on June 5, 2018, and at 9:00 a.m. on all other days, unless otherwise ordered.

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 issue to be heard at the due process hearing, and the proposed resolutions, are listed below.

Did District deny Student a free appropriate public education from October 1, 2015, through the end of the 2015-2016 regular school year, by failing to perform its child find obligation to assess Student for eligibility for special education placement and services?

The relief sought by Student includes: (1) payment of a portion of the costs for Student's placement at a residential treatment center; (2) reimbursement of a portion of the costs of compensatory education in the areas of social-emotional counseling, specialized academic instruction, and organizational skills training; and (3) reimbursement of a portion of the cost of the independent neuropsychological evaluation obtained by Student.

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 means of Bates-stamping or similar method, commencing with the first page of the first exhibit and ending with the last page of the last exhibit. 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. In the event of duplicate exhibits, the most legible version will be used. If any document is offered at hearing for review by the ALJ or a witness but was not included in any of the exhibit books, each such document shall be tabbed, hole-punched, and page numbered as described above.

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

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, upon timely notice. 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 served pursuant to Education Code section 56505, subdivision (e)(7), except for good cause shown, and at the discretion of the ALJ.

The parties shall meet and confer prior to the hearing to agree upon a witness schedule. During the hearing, the parties shall keep the ALJ and each other apprised of the witness schedule. The parties shall be prepared at the beginning of the hearing, as well as at all times during the hearing, to discuss the witnesses to be presented, the order in which they will be called, and the amount of time the testimony of each witness is expected to take. The parties shall coordinate the availability and order of testimony 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.

The ALJ has discretion to limit the number of witnesses who testify and to set the length of time allowed for the testimony of each witness. 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.

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. No party has requested that a witness testify telephonically. 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 objections and rulings. The witness shall testify using a landline telephone while alone in a private room. No witness will be heard by telephone unless all these requirements have been fulfilled.

7. Recording of Hearing.

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. No party has requested permission to audio record the hearing.

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 May 25, 2018.

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 permission is obtained from the ALJ. There shall be no weapons in the hearing room, except for any that a duly authorized law enforcement officer is carrying while present in the hearing room.

13. Special Needs and Accommodations. No party has requested any language interpretation or translation, or any other accommodation.

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 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. Hearing Closed To the Public. The hearing will be closed to the public unless Student requests it be open.

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 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 **1:00 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 OAH AT https://www.dgsapps.dgs.ca.gov/oah/oahsftweb .[1]

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,

[1] Please note that the assigned ALJ will be traveling from Los Angeles to San Diego on June 4, 2018, the day *before* the hearing starts. Therefore, to preserve state resources and judicial economy, the parties are ordered to notify OAH of any settlement as soon as possible.

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.

16. Failure to comply with this Order and with Education Code section 56505, subdivision (e)(7), may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: May 30, 2018

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Elsa H. Jones
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ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings