BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. AVESON GLOBAL LEADERSHIP ACADEMY,	OAH Case No. 2018110119
AVESON GLOBAL LEADERSHIP ACADEMY, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2019010133 ORDER FOLLOWING PREHEARING CONFERENCE

On March 29, 2019, a telephonic prehearing conference was held before Administrative Law Judge Christine Arden, Office of Administrative Hearings. Mark Woodsmall, Attorney at Law, appeared on behalf of Student. Vivian Billups, Attorney at Law, appeared on behalf of Aveson Global Leadership Academy. 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 April 16, 17 and 18, 2019, and continuing day to day, at the discretion of the ALJ. The hearing shall take place at Aveson's offices located at 575 West Altadena Drive, Altadena, CA 91001. The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 a.m. all other days, unless otherwise ordered.

As ordered in the scheduling order, the named local educational agency shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 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. The named local educational agency certified that the facilities used for this case comply with the law. The local educational agency shall inform OAH within two days of the date of this order if it is unable to comply with this order.

Prior to the beginning of the hearing, Aveson shall ensure that the hearing room is configured into a courtroom setting and shall have at a minimum (1) a table for Student and his representatives; (2) a table for Aveson's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. Aveson shall provide drinking water and tissue to all parties, witnesses and the ALJ. The same hearing room shall be used for each day of hearing and shall be available at least one hour prior to the commencement of the hearing each day. The hearing room shall be locked following the hearing each night. Aveson shall ensure that the hearing room and access to it are in compliance with the Americans with Disabilities Act.

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, and the proposed resolutions, are listed below.

Student's case

A. Issues:

(1) Did Aveson deny Student a free appropriate public education within the statutory period by failing to appropriately assess Student in all areas of suspected disabilities, specifically, the following areas:

(a) occupational therapy;
(b) speech and language;
(c) psycho-education;
(d) functional behavior;
(e) educationally related mental health services;
(f) vision therapy; and
(g) social skills?

(2) Did Aveson deny Student a FAPE by failing to assess Student in violation of its "child find" obligations?

(3) Did Aveson deny Student a FAPE by failing to accurately state Student's present levels of performance in each of her individual educational programs dated February 21, 2018, April 19, 2018, and June 19, 2018, in the following areas:

(a) communication;
(b) fine and gross motor;
(c) social/emotional;
(d) behavior; and

(e) community participation?

(4) Did Aveson deny Student a FAPE by failing to offer appropriate goals with regard to the following goals in each of the IEPs dated February 21, 2018, April 19, 2018, and June 19, 2018:

(a) academic-other, specifically, goal #1;
(b) academic-math, specifically, goal #2; and
(c) individual counseling, specifically, goal #5?

(5) Did Aveson deny Student a FAPE for the 2017-2018, and 2018-2019, school years by failing to offer Student the following at the April 19, 2018, and June 19, 2018, IEP team meetings:

(a) an appropriate placement, specifically, a nonpublic school;
(b) appropriate counseling;
(c) appropriate one-to-one aide support;
(d) appropriate speech and language therapy services;
(e) appropriate occupational therapy services;
(f) an appropriate behavior intervention plan; and
(g) appropriate social skills support?

(6) Did Aveson deny Student a FAPE in the 2017-2018, and 2018-2019, school years by failing to offer Student a program based on peer reviewed research based intervention?

(7) Did Aveson deny Student a FAPE for the 2017-2018, and 2018-2019, school years as a result of the following procedural violations:

(a) failure to timely provide Parents with an assessment plan;

(b) predetermining its offer of placement and services during the April 19, 2018, and June 19, 2018, IEP meetings;

(c) failing to consider the findings of Parents' private expert during the April 19, 2018, and June 19, 2018, IEP meetings; and

(d) failure to provide Parents with appropriate prior written notice regarding: Parents' request for an educational program specializing in "twice exceptional" children and additional counseling; and changing Student's placement.

(B) Student's proposed resolutions:

(1) Aveson shall place Student in a small, highly-structured classroom which may include placement at a nonpublic school with the appropriate aids, supports, and one-to-one academic instruction that specializes in educating "twice exceptional" students, and compensatory education, including reimbursement, if any, according to proof.

(2) Aveson shall provide intensive, 1:1 ABA behavior intervention services through a highly trained and highly qualified nonpublic agency provider throughout Student's school day.

(3) Aveson shall fund supervision hours for Student's intensive 1:1 ABA behavior intervention program, and compensatory education, including reimbursement, if any, according to proof.

(4) Aveson shall provide speech and language services through a highly trained and highly qualified nonpublic agency provider with expertise in treating children with Student's condition, and compensatory education, including reimbursement, if any, according to proof.

(5) Aveson shall provide occupational therapy services through a highly trained and highly qualified nonpublic agency provider with expertise in treating children with Student's condition, and compensatory education, including reimbursement, if any, according to proof.

(6) Aveson shall provide Student with an appropriate behavior support plan.

(7) Aveson shall provide intensive, individualized counseling services provided by a highly trained and highly qualified nonpublic agency provider with expertise in treating children with Student's condition, and compensatory education, including reimbursement, if any, according to proof.

(8) Aveson shall provide intensive social skills training by a highly trained and highly qualified nonpublic agency provider with expertise in treating children with Student's condition, and compensatory education, including reimbursement, if any, according to proof.

(9) Aveson shall provide round-trip, home-to-school transportation services and reimbursement, if any, according to proof.

(10) Aveson shall fund independent educational evaluations in the following areas: psycho-education, language and speech, educationally related mental health services, occupational therapy, social skills, vision therapy, and behavior.

(11) Aveson shall reimburse Parents for the expenditures they have incurred privately funding Student's tuition at the Stem 3 Academy for the 2018-2019 school year.

(12) The development of an appropriate IEP with all necessary team members included, and for attorney's fees incident to the development of an appropriate IEP pursuant to 20 U.S.C. section 1415(i)(3)(D)(ii).

(13) For costs of suit and attorney's fees herein incurred.

Aveson's case

(A) Issue:

(1) Did the IEP dated November 5, 2018, offer Student a FAPE in the least restrictive environment, such that Aveson may implement it over Parent's objection if Parent wishes Student to receive special education services from Aveson?

(B) Aveson's proposed resolutions:

(1) An Order finding that Aveson's November 5, 2018 IEP offered Student a FAPE in the least restrictive environment, such that Aveson may implement such offer of FAPE without Parent's written consent if Parent wishes for Student to receive special education from Aveson.

(2) An additional Order finding that Aveson is not obligated to reimburse Parent for costs Parent incurred, and associated with Parent's unilateral placement of Student at a nonpublic school, and/or Aveson is not obligated to fund Student's placement at such nonpublic school as an equitable remedy.

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 Aveson 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 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.

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.

The parties shall meet and confer by **April 9, 2019**, to delete duplicate exhibits from the exhibit binders.

The parties shall exchange resumes for each witness who is expected to testify to their professional credentials, and include those resumes in their exhibit binders. Notwithstanding the requirements of Education Code section 56505, subd. (e)(7), the parties shall exchange resumes and curriculum vitae by **April 9, 2019.** Aveson shall include as part of its exhibits the school calendar(s) for all of the years at issue, including the calendars for extended school years. Notwithstanding the requirements of Education Code section 56505, subd. (e)(7), Aveson shall serve a copy of the applicable school calendar(s) on Student by **April 9, 2019,** 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 IEP's, the parties shall include 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 IEP team meeting, if any, should, in addition to the audio record offered, be transcribed and offered as documentary evidence. That portion of the audio record transcribed shall be provided to the opposing party along with the transcript before the hearing to allow an opportunity to verify the accuracy of the transcription. Transcriptions need not be prepared by a certified court reporter.

4. 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 are available to testify. Each party shall make witnesses under her/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. Education Code section 56505, subd.(e)(8), affords each party the right to prohibit the introduction of any evidence at the hearing that has not been disclosed at least five business days before the hearing. Each party shall identify witnesses by name and provide a list to opposing counsel by 5:00 p.m. on **April 9, 2019.**

The parties shall meet and confer by 5:00 p.m. on **April 9, 2019,** to schedule 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. As part of the meet and confer process, Aveson's counsel shall inform Student's counsel as to whether the witnesses on Student's witness list are employed by or otherwise under the control of Aveson, and if not, Aveson shall provide Student's counsel with the witness(es)' most recent contact information to enable Student to issue subpoenas to Aveson's former employees. This contact information should be provided only

to Student's counsel and his agents as is necessary to serve subpoenas on Aveson's former employees.

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. Aveson 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 to revise the witness schedule as needed.

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. Education Code, section 56505.1, subd. (h), empowers the ALJ presiding at a due process hearing to set a reasonable limit on the length of the hearing after consideration of all of the following: (i) issues to be heard, (ii) complexity of facts to be proven, (iii) ability of the parties or their representatives to present their respective cases, and (iv) estimates of the parties as to the time needed to present their respective cases.

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. Aveson requested that witness, Robyn Gloyd, be allowed to testify at hearing telephonically. This request was granted, subject to the conditions for telephonic testimony set forth below. 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 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. 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 telephone while alone in a private room. No witness will be heard by telephone unless all these requirements have been fulfilled.

7. Electronic Recording of Hearing.

a. Audio Recording. Aveson requested leave to make an audio recording of the hearing. Both parties were granted leave to record the hearing, subject to the following conditions: (1) such recording shall be for the party'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) operation of a personal recording device will not delay the hearing; (4) the parties shall not play any part of the recording for any prospective witness(es) and the recording shall not be disseminated; (5) the parties shall not use the recording in any subsequent due process hearing; (6) the recording is subject to the same confidentiality as the due process hearing; and (7) the parties shall dispose of the unofficial recording when the time for appeal of the ALJ's decision in this matter has expired. Any recording made by either party is not the official record and is permitted as a courtesy, unless otherwise ordered by the hearing ALJ. The OAH recording made by the hearing ALJ is the official record unless otherwise ordered.

b. Video Recording. No video recording of any part of the proceedings is permitted. 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, 62 [126 S.Ct. 528, 163 L.Ed.2d 387].) Here, Student is the petitioning party in the primary case in this consolidated matter. Accordingly, Student shall present her case-in-chief, followed by Aveson.

9. Motions. Other than Student's contemplated motion to preclude Aveson from offering Aveson's exhibit number 11 into evidence, based on its inconsistency with the "snapshot rule," no other pretrial motions are pending or contemplated. Any motion filed after March 29, 2019, shall be supported by a declaration, made under penalty of perjury, establishing good cause as to why the motion was not made prior to or during the prehearing conference of March 29, 2019.

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 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. Special Needs and Accommodations. Aveson's counsel requested an accommodation permitting her to record the hearing. Such accommodation was granted, subject to the conditions set forth in paragraph 6 of this Order.

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, or email the OAH ADA Coordinator's office as soon as the need is known. The e-mail address for the office is OAHADA@dgs.ca.gov and the e-mail should have "Request for Accommodation" in the Subject Line. 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 Open to the Public. At Student's request the hearing will be open to the public.

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.applications.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 school board approval, in addition to a signed copy of the signature page of the settlement agreement, as noted above, the parties shall also provide the date of the school board meeting at which the school board's approval of the settlement will be addressed. OAH will not cancel the hearing dates without the above mentioned information. OAH will dismiss the case 30 days following the date of the applicable school board meeting, unless OAH is informed by the filing party that the school board did not approve the settlement.

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

IT IS SO ORDERED.

DATE: March 29, 2019

DocuSigned by:
Christine Arden
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CHRISTINE ARDEN
Administrative Law Judge
Office of Administrative Hearings