BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SANTA BARBARA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016050450 ORDER FOLLOWING PREHEARING CONFERENCE

On August 29, 2016, a telephonic prehearing conference was held before Administrative Law Judge Cheryl Carlson, Office of Administrative Hearings. Father, Attorney at Law, appeared on behalf of Student. Karen E. Gilyard, Attorney at Law, appeared on behalf of Santa Barbara 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 September 7 and 8, 2016, and continuing day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at the District's offices located at 720 Santa Barbara Street, Santa Barbara, CA 93101. 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, Santa Barbara 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. Santa Barbara certified that the facilities used for this case comply with the law. Santa Barbara 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, Santa Barbara shall ensure that the hearing room is configured into a courtroom setting, including (1) a table for Student and his representatives; (2) a table for Santa Barbara's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. Santa Barbara shall provide drinking water and tissue to all parties, witnesses and the ALJ. The same hearing room shall be used for each day of the 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. Santa Barbara 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.

Issue One: Did Santa Barbara fail to implement Student's individualized evaluation program in the 2015-2016 school year by:

a. failing to schedule her in an art class in the fall semester;

b. allowing her to miss her general education physical education class; and

c. failing to have accessible physical education equipment and an accessible swimming pool?

Issue Two: Did Santa Barbara commit the following procedural violations which resulted in a denial of FAPE to Student in the 2015-2016 School year:

a. inserting inaccurate statements into the meeting notes of IEP's;

b. inserting behavioral intervention terms into IEP's which were not supported by a Functional Behavior Assessment;

c. providing amendments to IEP's which were not completed and without obtaining parental consent to amend;

d. failing to provide parents with a complete, accurate copy of IEP's;

e. making unilateral decisions regarding IEP language and services;

f. holding IEP team meetings on short notice without parents;

g. failing to accommodate parental availability for IEP team meetings;

h. failing to provide attendees names for noticed IEP team meetings in advance of the meeting;

i. seeking to excuse IEP team members at the time of the IEP team meeting, when there was advance notice the members could not attend the meeting;

j. scheduling redundant and unnecessary IEP team meetings;

k. not allowing Parents to speak to Student's teacher, aide and all service providers and, instead, requiring all communication to go through the Assistant Principal;

l. failing to respond to Parent's concerns regarding injuries, participation in general education classes and Parental observations;

m. limiting Parent's observations of Student's program; and

n. not allowing Parent's to see a demonstration of "goal-specific" exercises.

Issues Dismissed: Student's issues identified as Problem/Complaint numbers 5 and 6 are dismissed for lack of jurisdiction.

Proposed resolutions: Student seeks an order that Santa Barbara shall audit Student's 2015-2016 school year and determine the total number of minutes that Student was denied inclusion in the general art and P.E. classes; at Santa Barbara's expense, Student will receive qualified instruction in these areas to compensate Student for the missed instructional time. These compensatory services shall be provided outside the regular school day. Santa Barbara shall obtain an exercise bicycle that is fully accessible to Student during her regular P.E. sessions.

Santa Barbara shall provide parents with an accurate and complete IEP which, in all respects: (1) is consistent with the deliberation and decisions of the Team; (2 includes all parental attachments; (3) contains accurate descriptions of Student's present levels, disabilities, strengths and needs; (4) does not contain inaccurate statements re: parental input, blatant inaccuracies and/or self-serving statements by Santa Barbara inserted as "Meeting Notes" into IEP documents; and (5) does not contain language and/or services which are not supported by IEP Team consensus. Santa Barbara will provide parents with a fully accurate and complete IEP document for signing asap but no later than July 1, 2016. Santa Barbara shall compensate Student, in an amount to be determined, for the value of all services denied while out of compliance.

Santa Barbara shall henceforth: (1) identify the name and capacity of each and every attendee in all IEP meeting notices; (2) provide parents with at least 21 days advance notice and at least three dates for all proposed IEP meetings; (4) provide 48 hours' notice of any team member's sudden unavailability to attend an IEP meeting to allow parents to continue the meeting or review any absentee member's report and determine whether to continue the IEP meeting to a date when the absent team member can be present or agree to excuse a team member and proceed with the meeting as scheduled; (5) refrain from scheduling burdensome, redundant or otherwise meaningless meetings; and (6) remove all record of purported "IEP meetings" that took place without parents' presence and participation.

Santa Barbara must remove all barriers to parents' communications with site staff and special service providers working directly with Student and, instead, will affirmatively encourage direct and effective communication between site staff and special service providers, on one side, and the parents on the other side. Santa Barbara will allow parents to observe any and all site staff and special service providers to demonstrate their knowledge of, and proficiency in, all of Student's "goal specific" exercises, as identified in Student's IEP. Parents shall be able to request demonstrations of specific exercises within the individual staff members, or special service provider's areas of responsibility for working with Student to reach any and all of Student's IEP identified goals. Staff unable to demonstrate a reasonable level of proficiency in working with Student will not be further assigned to work with 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 if 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 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 timely exchanged shall not be admitted into evidence at the hearing unless the ALJ rules that it is admissible.

4. Witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses; however the parties shall make witnesses under their control reasonably available to the other party. Witness shall be scheduled in a way that avoids delays and minimizes or eliminates having to call a witness twice or out of order. Neither party shall be permitted to call any witnesses not timely disclosed except for good cause shown, and at the discretion of the ALJ.

The parties are ordered to meet and confer to develop a proposed joint witness schedule. The proposed schedule will be presented to the ALJ at the beginning of the hearing. Prior to commencing the hearing, the ALJ and the parties will discuss the proposed witness schedule and address scheduling issues for individual witnesses before the schedule is finalized. The ALJ has discretion to limit the number of witnesses and the length of their testimony.

5. Scope of Witness Examination: After the first direct and cross-examinations, each party will be permitted to question the witness on matters raised in the immediately preceding examination. Parties are required to establish their cases in chief (conducting both direct and cross) so that each witness only appears once.

6. Telephonic Testimony. A party must ask in advance it intends to present a witness by telephone; if granted, the party shall provide the proposed witness with a complete set of exhibit binders from all parties 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. At this point there is no pending request for telephonic testimony.

7. Electronic Recording of Hearing.

a. Audio Recording. Student's request to make an audio recording of the hearing is granted, subject to the following conditions: 1) that OAH's recording is the only official recording; 2) that the recordings will be turned on and off at the same time as the ALJ's recording, in order to avoid recording conversations while off the record; and 3) that the operations of the parties' recording mechanisms 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. 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 Santa Barbara.

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 prehearing conference of August 29, 2016.

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. Neither party requires an interpreter or any other accommodations. 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: http://www.dgs.ca.gov/oah/Home/Accessibility.aspx.

14. Hearing Open/Closed To the Public. At the request of Student, the hearing will be closed 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 **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.

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

IT IS SO ORDERED.

DATE: August 29, 2016

DocuSigned by:
Cheryl Carlson
38E39DEF649141D...

CHERYL CARLSON
Administrative Law Judge
Office of Administrative Hearings