BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT,	OAH Case No. 2018060459
LOS ANGELES UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2018100624 ORDER FOLLOWING PREHEARING CONFERENCE

On January 25, 2019, a telephonic prehearing conference was held before Administrative Law Judge Deborah Myers-Cregar, Office of Administrative Hearings. Parent appeared did not appear on behalf of Student, and did not answer four telephone calls by the ALJ at 10:00,10:04,10:07, and 10:30 a.m.. Patrick Balucan, Attorney at Law, appeared on behalf of Los Angeles 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. Based on Parent's prior accommodation request granted, the hearing shall begin at 10:00 a.m. the first day of the hearing and at 10:00 a.m. all other days, unless otherwise ordered. The hearing shall be held on February 5, 6, 7, 2019 at 10:00 AM, and continuing day to day, as needed at the discretion of the Administrative Law Judge. The Due Process Hearing shall take place at the Office of Administrative Hearings located at 15350 Sherman Way, Suite 300, Van Nuys, California, 91406.

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. Whether Los Angeles Unified denied Student a Free and Appropriate Public Education by failing to comprehensively assess Student in its November 6, 2017 Assistive Technology assessment.

B. Whether Los Angeles Unified denied Student a FAPE by failing to comprehensively assess Student in its November 13, 2017 Occupational Therapy assessment.

C. Whether Los Angeles Unified denied Student a FAPE by failing to assess Student in all suspected areas of disability including Dyslexia, based upon Student's present levels of performance developed at the October 3, 2017 Individualized Education Program, and findings from the November 6, 2017 Assistive Technology assessment.

D. Whether Los Angeles Unified denied Student a FAPE by failing to offer Extended School Year services pursuant to the October 3, 2017 IEP as amended on November 13, 2017.

E. Whether Los Angeles Unified denied Student a FAPE by failing to hold an IEP team meeting within 30 days of Parent's request on April 10, 2018.

Los Angeles Unified's case:

F. Whether Los Angeles Unified's March 30, 2017 psycho-educational assessment was appropriate such that Student is not entitled to a psycho-educational Independent Educational Evaluation.

G. Whether Los Angeles Unified's November 6, 2017 assistive technology assessment was appropriate such that Student is not entitled to an assistive technology IEE.

H. Whether Los Angeles Unified's November 13, 2017 occupational therapy assessment was appropriate such that Student is not entitled to an occupational therapy IEE.

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 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.

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. 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 prehearing conference statement except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

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.

The parties shall attempt to reach agreement on a witness list for the first day of hearing. Los Angeles Unified shall have witnesses available in case agreement on a witness list is not reached. Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for direct and cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. Additionally, the parties shall be prepared at the end of each day of hearing to discuss the witnesses to be presented the next day and the time the testimony of each such witness is expected to take.

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. 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, unless the opposing party has stipulated that the witness may appear by telephone. 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. No witness will be heard by telephone unless all these requirements have been fulfilled.

7. Electronic Recording of Hearing.

a. Electronic Recording. Parent's request for accommodation by electronically recording the hearing is granted, subject to the following conditions: 1) that OAH's recording is the only official recording of the hearing; 2) that the recording 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 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. 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 and Los Angeles Unified are both the petitioning parties, with Student having filed an earlier Due Process Request. Accordingly, Student shall present its case-in-chief, followed by Los Angeles Unified. In the event the Student's case is dismissed at the scheduled Order to Show Cause, then Los Angeles Unified shall present its 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 three days prior to or during the prehearing conference of January 25, 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. Parent's request for accommodations in the form of a late start time was granted at the January 14, 2019 Prehearing conference.

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.

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 matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement as noted above, the parties shall submit a request for a status conference and provide the date of the next board meeting. The hearing dates will not be cancelled without this information

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

IT IS SO ORDERED.

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Deborah Myers-Cregar
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DATE: January 25, 2019

DEBORAH MYERS-CREGAR
Administrative Law Judge
Office of Administrative Hearings