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 9 State of California Office of Administrative Hearings

10
 11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
 13

14 **C.S., by and through his Conservator,
 MARY STRUBLE, on behalf of himself and
 15 all others similarly situated,**

16 Plaintiff,

17 v.

18 **CALIFORNIA DEPARTMENT OF
 EDUCATION, a State Agency,**

19 Defendant.
 20

Case No.: 08 CV0226 W AJB

**DECLARATION OF SHERIANNE
 LABA IN SUPPORT OF OAH'S
 OPPOSITION TO PLAINTIFF'S
 TEMPORARY RESTRAINING
 ORDER**

Hearing: April 28, 2008
 Judge: The Honorable Thomas J. Whelan

21
 22 I, Sherianne Laba, declare:

23 1. I am the Presiding Administrative Law Judge (PALJ) for the Office of Administrative
 24 Hearings, Special Education Division, in Sacramento, California. The Office of Administrative
 25 Hearings (OAH) is a division of the Department of General Services of the State of California.
 26 Unless otherwise stated, I have personal knowledge of each fact stated in this declaration.

27 2. I have held this position since January 2, 2007. As PALJ for the Sacramento Office Special
 28 Division my duties include but are not limited to; direct supervision of Administrative Law Judges

1 (ALJs), direct supervision of judge pro tems, review of orders and decisions, statewide calendaring,
2 maintenance of data records, case auditing, and preparation of data reports. I also serve as a member
3 of the special education Advisory Committee and participate in CDE contract monitoring meetings.
4 I report directly to Ron Diedrich, Director and Chief Administrative Law Judge of OAH.

5 3. I obtained my Juris Doctor degree in May 1999 from McGeorge School of Law in
6 Sacramento, California. Prior to obtaining my law degree, I received a Bachelor of Science in
7 Criminal Justice from California State University, Sacramento (CSUS) in May 1996. Since obtaining
8 my law degree, I received a Master of Education in Special Education from CSUS in May 2007. I
9 am also currently completing a certificate program entitled Leadership for the Government Executive
10 at CSUS.

11 4. I have worked in the special education area of law in a variety of positions since 1997.
12 Attached hereto as **EXHIBIT 1** is a true and correct copy of my current resume. As described more
13 fully in Exhibit 1, I have worked for private law firms and other entities specializing in special
14 education law.

15 5. Attached hereto as **EXHIBITS 2, 3, and 4** are true and correct copies of the contract
16 between OAH and the California Department of Education ("CDE") ("Contract"). Exhibit 2 is the
17 contract approved by the Department of General Services (DGS) on June 8, 2005. Exhibit 3 is first
18 amended contract approved March 1, 2007. Exhibit 4 is the second amended contract approved by
19 DGS on June 28, 2007.

20 6. Under the contract approved June 8, 2005, ALJs were required to receive 80 hours of
21 specialized training annually. (Ex 2, Exhibit A , section C 3.) In the contract approved March 1,
22 2007, ALJs are required to received 80 hours during their first year of employment and a minimum
23 of 20 hours thereafter (Ex. 3, Exhibit A, Section C3). This level of specialized training was
24 maintained in the contract approved June 28, 2007 (Ex. 4, Exhibit A, Section C3).

25 7. In my capacity as the PALJ, I maintain the list for the trainings attended by the ALJs under
26 my supervision in Sacramento. I have particular knowledge of these trainings because I personally
27 planned and attended a majority of the trainings. Ann MacMurray, PALJ in Van Nuys, and Timothy
28 Newlove, PALJ in Laguna Hills, maintain lists for the trainings attended by the ALJs under their

1 supervision. In my capacity as PALJ, I also maintain a master list for all the ALJs in the special
2 education division. Attached hereto as **EXHIBIT 5** is a true and correct copy of the master training
3 list that I have maintained regarding the trainings received by ALJs in the Special Education division
4 since July 2005. The master training list gives the title of the training, the date, the names of the
5 presenters, whether or not materials were provided and categorizes the training as special education
6 ("SE"), mediation ("Med.") or administrative process ("ALJ") hours. The majority of trainings
7 offered in the last three years have been in the area of special education.

8 8. Attached as **Exhibit 6** is a sample of training materials and presenter biographies (when
9 available) for each of the three categories of training offered. Included in **Exhibit 6** are training
10 materials for the following trainings:

- 11 • Special Education Discussion Panel, November 8, 2006 (3.75 SE hours)
- 12 • Dispute Resolution Principles and Techniques, August 9, 2007 (3 Med. Hours)
- 13 • Autism Programs, October 15, 2007 (2.5 SE hours)
- 14 • The Philosophy of Judging Through Literature, November 13, 2007 (2.5 ALJ hours)

15 9. Every ALJ employed by OAH in the Special Education Division for at least one year has
16 completed at a minimum the requisite 80 hours of training in areas related to special education and
17 the administrative process in the first year of employment. Also, each ALJ has completed a minimum
18 of 20 hours of training each fiscal year.

19 Additionally, every ALJ hired by OAH is required to have at least five years experience in the
20 practice of law and be an active member of the state bar. Lastly, four ALJs were hearing officers at
21 the California Special Education Hearing Office located at McGeorge School of Law (SEHO) before
22 being hired by OAH as ALJs and three of those ALJs work in the Special Education Division.

23 10. Under Federal and state law, both a school district and a parent have the right to request a
24 due process hearing. In addition, the law provides the parties the opportunity to attempt to resolve
25 their dispute through the mediation process. Traditionally, in California, every request for due
26 process hearing is also considered a request for mediation. As such, when a request for due process
27 hearing is received, OAH schedules a mediation date followed by a prehearing conference date and
28 five hearing days. The mediation process remains voluntary, however, the vast majority of parties

1 elect to participate in mediation or some type of dispute resolution process. As a result of mediation,
2 settlement and dismissals, only approximately 3 to 5 percent of requests for due process hearing
3 actually result in a due process hearing and the issuance of a decision from OAH.

4 11. Attached hereto as **EXHIBITS 7 through 15** are true and correct copies of the quarterly
5 reports required under the contracts to be submitted to CDE and can be found at the following
6 website address: www.oah.dgs.ca.gov. These reports indicate the number of due process requests
7 that were resolved in a manner other than a written decision issued by OAH. For those reports that
8 do not provide the percentage, I have calculated it by dividing the total number of decisions issued
9 by OAH by the total number of closed cases.

- 10 • **Exhibit 7:** Office of Administrative Hearings, Special Education Division, July –
11 December 2005 Report. According to this report, 97 percent of due process hearing
12 requests were resolved in some manner other than a written decision issued by OAH.
13 (Ex. 7 at 2-3.)
- 14 • **Exhibit 8:** Special Education Division, Quarterly Report – Third Quarter 2005-06,
15 January 1, 2006 – March 31, 2006. According to this report, 96 percent of due
16 process hearing requests were resolved in some manner other than a written decision
17 issued by OAH. (Ex. 8 at 4, 7.)
- 18 • **Exhibit 9:** Special Education Division, Quarterly Report, Fourth Quarter 2005/2006,
19 Fiscal Year, April 1, 2006 – June 30, 2006. According to this report, 94 percent of
20 due process hearing requests were resolved in some manner other than a written
21 decision issued by OAH. (Ex. 9 at 5, 8.)
- 22 • **Exhibit 10:** Special Education Division, Quarterly Report, First Quarter 2006/2007,
23 Fiscal Year, July 1, 2006 – September 30, 2006. According to this report, 94 percent
24 of due process hearing requests were resolved in some manner other than a written
25 decision issued by OAH. (Ex. 10 at 3, 6.)
- 26 • **Exhibit 11:** Special Education Division, Quarterly Report, Second Quarter
27 2006/2007, Fiscal Year, October 1, 2006 – December 31, 2006. According to this
28 report, 96 percent of due process hearing requests were resolved in some manner

- 1 other than a written decision issued by OAH. (Ex. 11 at 3, 6.)
- 2 • **Exhibit 12:** Special Education Division, Quarterly Report, Third Quarter 2006/2007,
3 Fiscal Year, January 1, 2007 – March 31, 2007. According to this report, 96 percent
4 of due process hearing requests were resolved in some manner other than a written
5 decision issued by OAH. (Ex. 12 at 3, 6.)
- 6 • **Exhibit 13:** Special Education Division, Quarterly Report, Fourth Quarter
7 2006/2007, Fiscal Year, April 1, 2007 – June 30, 2007. According to this report, 95
8 percent of due process hearing requests were resolved in some manner other than a
9 written decision issued by OAH. (Ex. 13 at 4, 6.)
- 10 • **Exhibit 14:** Special Education Division, Quarterly Report, First Quarter 2007/2008,
11 Fiscal Year, July 1, 2007 – September 30, 2007. According to this report, 97 percent
12 of due process hearing requests were resolved in some manner other than a written
13 decision issued by OAH. (Ex. 14 at 6, 8.)
- 14 • **Exhibit 15:** Special Education Division, Quarterly Report, Amended First Quarter
15 2007/2008, Fiscal Year, July 1, 2007 – September 30, 2007, Second Quarter
16 2007/2008, Fiscal Year, October 1, 2007 – December 31, 2007 – September 30,
17 2007. According to this report, 95 percent of due process hearing requests were
18 resolved in some manner other than a written decision issued by OAH. (Ex. 15 at 9,
19 11.)

20 12. Attached hereto as **EXHIBITS 16 through 19** are true and correct copies of the Quarterly
21 reports issued by the SEHO for the last year SEHO held a contract with CDE to conduct special
22 education hearings and mediations. The percentage of due process hearing requests that were
23 resolved in some manner other than a written decision issued by SEHO can be calculated in the same
24 manner as described in Paragraph 11.

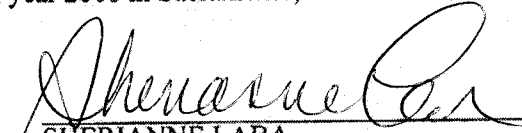
- 25 • **Exhibit 16:** Special Education Hearing Office, Quarterly Report, July-September
26 2004, 1st Quarter Fiscal Year 2004/2005: According to this report, 96 percent of due
27 process hearing requests were resolved in some manner other than a written decision
28 issued by SEHO. (Ex. 16 at 13, 14.)

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- **Exhibit 17:** Special Education Hearing Office, Quarterly Report, October – December 2004, 2nd Quarter Fiscal Year 2004/2005: According to this report, 96 percent of due process hearing requests were resolved in some manner other than a written decision issued by SEHO. (Ex. 17 at 15, 16.)
- **Exhibit 18:** Special Education Hearing Office, Quarterly Report, January – March 2005, 3rd Quarter Fiscal Year 2004/2005: According to this report, 95 percent of due process hearing requests were resolved in some manner other than a written decision issued by SEHO. (Ex. 18 at 18, 19.)
- **Exhibit 19:** Special Education Hearing Office, Quarterly Report, April – June 2005, 4th Quarter Fiscal Year 2004/2005: According to this report, 96 percent of due process hearing requests were resolved in some manner other than a written decision issued by SEHO. (Ex. 19 at 19, 20.)

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on the 14 day of April, year 2008 in Sacramento, California.


SHERIANNE LABA