BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BELLFLOWER UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018020218 ORDER FOLLOWING PREHEARING CONFERENCE

On May 11, 2018, a telephonic prehearing conference was held before Administrative Law Judge Laurie Gorsline, Office of Administrative Hearings. Alexander Diaz, Attorney at Law, appeared on behalf of Student. Marcia Brady, Attorney at Law, appeared on behalf of District. The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

1. Motion to Amend. At the prehearing conference, Student's counsel stated that Student intended to file a motion to amend the complaint. Student's counsel was informed that any motion to amend was due three days prior to the prehearing conference and that any motion filed after the prehearing conference must be supported by a declaration under penalty of perjury establishing good cause for filing it late. Student's counsel stated that he did not earlier file the motion because he thought the case would settle. District's counsel stated that Student's counsel indicated they intended to dismiss the complaint. Student's counsel was ordered to make certain that any motion filed was properly served on District's counsel.

After the May 11, 2018 prehearing conference, and before an Order Following the Prehearing Conference issued, Student filed a Motion to Amend the Due Process Hearing Request and a Motion for Continuance. On May 16, 2018, OAH granted the motion to amend, reset all applicable timelines and denied the motion for a continuance as moot.

2. Hearing Dates, Times, and Location. The hearing dates scheduled as of the May 11, 2018, PHC were vacated and reset on May 16, 2018. A prehearing conference shall be held on July 2, 2018, and the due process hearing shall begin on July 10, 2018. The hearing shall be held at:

Bellflower Unified School District
16703 South Clark Ave
Bellflower, California 90706

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.

The hearing room shall be available to the ALJ one hour before the scheduled hearing, and shall be secured and locked at the end of each hearing day. **The same hearing room shall be used for each day of hearing.** Prior to the beginning of the hearing, District shall assist the ALJ to ensure that the hearing room is configured into a courtroom setting, including (1) a table for Student and his representatives; (2) a table for District's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ near an electrical outlet. District shall also make reasonable effort to ensure that drinking water and tissue are available to all parties, witnesses and the ALJ.

District shall arrange a separate room for Student and his counsel to use during the hearing. District shall ensure that the room is available for Student and Student's counsel each day of the hearing at least thirty minutes prior to the scheduled start time of the hearing through 4:30 p.m.

District shall also ensure that one parking space is available on each hearing day for each of the following: the ALJ, Parents, Student's attorneys, District's attorneys, and witnesses.

The local educational agency shall immediately notify OAH if it is unable to comply with any part of this paragraph.

3. Facility Certification. As ordered in the scheduling order, the named local educational agency was to 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. At the time of the prehearing conference, the named local educational agency failed to certify that it would provide a facility for this case that complied with the law. District was ordered to certify to OAH by way of a certification signed under penalty of perjury that its hearing facilities comply with the law, or notify OAH that it is unable to comply with this order by no later than May 14, 2018. On May 14, 2018, District filed the required certification.

4. District's Response to Complaint. State and federal law require a local education agency to respond to a due process. (Ed. Code, § 56502, subd. (d)(2)(A); 20 USC

§ 1415(c)(2)(B)(i)(I); 34 C.F.R. § 300.508.); *M.C. by and through his guardian ad litem M.N. v. Antelope Valley Union High School District* (9th Cir. 2017) 858 F.3d 1189, 1199-1200.)

District filed a response to Student's complaint on February 22, 2018.[1]

5. Prehearing Conference Statements and Motions: Both parties were admonished for filing their respective prehearing conferences statements late.

Student's counsel was admonished for not properly serving opposing counsel with his prehearing conference statement.

At the May 11, 2018, prehearing conference, District's counsel was admonished for including a motion to strike within its response and not properly captioning the motion. All motions shall be separately filed and served and properly captioned on the first page of the motion.

District's counsel was admonished for including a motion to strike within its prehearing conference statement. All motions shall be separately filed and served and properly captioned on the first page of the motion.

6. Issues and Proposed Resolutions. During the prehearing conference as reflected in the record, Student's counsel and the ALJ clarified issues (1) through (5) of Student's complaint, which the ALJ has renumbered and rephrased pursuant to the discussion at the prehearing conference as set forth below.[2]

Issues:

1. Did District deny Student a free appropriate public education by failing to conduct a social-emotional assessment since February 5, 2016?

2. Did District deny Student a FAPE in the November 2016 individualized education program by failing to:

   (a) Accurately measure and report Student's present levels of performance;

   (b) Offer appropriate goals;

   (c) Offer an appropriate placement;

[1] District did not file a response to Student's amended complaint.

[2] Further clarification of these issues, including identification of the goals challenged at the November 2016 IEP, and the new issues presented in the amended complaint are deferred to the July 2, 2018, prehearing conference.

(d) Offer any and/or appropriate services in the following areas:

(1) Math services in the form of individual and group resource support or specialized academic instruction for math;

(2) Behavior intervention in the form of full-time aide support and behavior supervision or one-to-one adult assistance; and

(3) Speech and language services?

3. Did District deny Student a FAPE by failing to assess Student in all areas of known or suspected disability by, specifically:

(a) Failing to assess in the area of speech and language since November 2016; and

(b) Failing to assess Student in the area of assistive technology since November 2016?

4. Did District deny Student a FAPE in the May 31, 2017 IEP by failing to:

(a) Offer an appropriate placement;

(b) Offer any and/or appropriate services in the following areas:

(1) Math services in the form of individual and group resource support or specialized academic instruction for math;

(2) Behavior intervention in the form of full-time aide support and behavior supervision or one-to-one adult assistance; and

(3) Speech and language services?

5. Did District deny Student a FAPE in the October 2017 IEP by failing to:

(a) Failing to offer an appropriate placement;

(b) Failing to offer any and/or appropriate services in the following areas:

(1) Math services in the form of individual and group resource support or specialized academic instruction for math;

(2) Behavior intervention in the form of full-time aide support and behavior supervision or one-to-one adult assistance; and

(3) Speech and language services?

Proposed Resolutions:

By the complaint, Student sought independent assessments for psychoeducation, functional behavior, and assistive technology; non-public agency full-time one-to-one assistance; resource support services; speech and language services; compensatory education and reimbursement for tutoring and transportation.

7. 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. 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.

Each exhibit shall consist of one document; separate documents may not be combined into one exhibit. To the extent practicable, exhibits in the exhibit binders shall be in chronological order.

The parties shall exchange resumes for each witness who is expected to testify as to their professional credentials. Notwithstanding the requirements of Education Code section 56505, subd. (e)(7), the parties shall exchange resumes and curriculum vitae **not later than five business days prior to the hearing.**

District shall include as part of their exhibits the school calendar(s) for all of the years at issue. Notwithstanding the requirements of Education Code section 56505, subd. (e)(7), District shall serve a copy of the school calendar(s) on Student by vitae **not later than five business days prior to the hearing** 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 attach 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 or attached to 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 to allow an opportunity to verify the

accuracy of the transcription. Transcriptions need not be prepared by a certified court reporter.

The parties shall meet and confer **by not later than four business days prior to the hearing at 5:00 p.m.** to delete duplicate exhibits from the exhibit binders. 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 it is supported by written declaration under penalty of perjury, and the ALJ rules that it is admissible. 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 timely disclosed.

8. 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 will be available to testify. 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.

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.

The parties shall meet and confer **by not later than four business days prior to the hearing** as to the schedule of 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. **The parties shall also meet and confer regarding the one joint detailed hour-by-hour schedule described below**.

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 identify which party(s) is calling the witness to testify and include an estimate of time for each party's direct and cross-examination. Counsel shall meet and confer each day of hearing to revise the witness schedule as needed.

The parties are ordered to meet and confer by **no later than four business days prior to the hearing at 5:00 p.m.** and identify the witnesses on its/his respective witness lists who cannot be produced at hearing without a subpoena and provide the witnesses contact information to opposing counsel so that subpoenas can be issued. As part of the meet and confer process, District'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 District, and if not, shall provide Student's counsel with the witness(es) most recent contact information by

not later than four business days prior to the hearing at 5:00 p.m. Any contact information provided by District shall be used by Student's counsel for the limited purpose of issuing subpoenas or for contacting the witness(es) for purposes of attending the hearing and shall not be disseminated to any other person(s).

Each witness will only be called once to testify, except for rebuttal purposes, and all parties shall examine the witness when the witness is first called. District 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 the time the testimony each witness is expected to take.

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.

9. 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 unless otherwise permitted by 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.

10. Telephonic Testimony. Neither party requested 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).) In the event that telephonic testimony is requested, the party seeking to present a witness by telephone shall move in advance for leave to do so. Any motion filed shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not timely made three days prior to the prehearing conference, 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 *exact 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.* District shall ensure that 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 land-line telephone while alone in a private room. No witness will be heard by telephone unless all these requirements have been fulfilled.

11. Electronic Recording of Hearing.

a. Audio Recording. The ALJ shall record the hearing and the ALJ's recording is the only official record of the hearing, unless otherwise ordered. No person shall record or photograph the proceedings unless otherwise permitted by the ALJ.

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.

12. 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 Student's case-in-chief, followed by District. However, if a witness is called by more than one party, all parties shall examine the witness when the witness is first called.

13. Motions.

District's motion to strike: District included a motion to strike within its prehearing conference statement, seeking to strike from Student's original complaint all allegations which predated the filing date of the complaint by more than two years. District argued that all claims which predate the filing of the complaint by more than two years were barred by the two-year statute of limitations.

Student filed no written opposition, but orally opposed the motion on the grounds that the allegations which predated the complaint by more than two years were background information, and therefore, none of the claims were outside the two-year statute of limitations.

District's motion was denied at the prehearing conference. Although the complaint contained allegations going back as far as 2012, Student's counsel represented that none of Student's claims predated the filing of the complaint by more than two years.

Student's motion to amend: At the prehearing conference, Student's counsel stated that Student intended to file a motion to amend the complaint. Student's counsel was informed that any motion to amend was due three days prior to the prehearing conference and that any motion filed after the prehearing conference must be supported by a declaration under penalty of perjury establishing good cause for filing it late. Student's counsel stated that he did not earlier file the motion because he thought the case would settle. District's counsel stated that Student's counsel indicated they intended to dismiss the complaint. Student's counsel was ordered to make certain that any motion filed was properly served on District's counsel.

Other 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 timely made three days prior to the prehearing conference.

14. 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.

15. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form. The parties shall meet and confer **by not later than two business days prior to the hearing at 5:00 p.m.** to determine legal and factual stipulations, if any, to be submitted at hearing.

16. 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 during the hearing unless permission to the contrary is obtained from the ALJ. There shall be no texting permitted while the hearing is in session.

17. Special Needs and Accommodations. A Spanish language interpreter and translator is required. 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.

18. Closed Hearing. The hearing will be closed to the public.

19. 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.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.

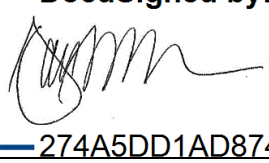
If the parties settle the matter subject to board approval, **in addition to a signed copy of the signature page of the settlement agreement** as noted above, the parties shall submit a request for a status conference and provide the date of the next board meeting. OAH will not cancel the hearing dates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

20. Failure to Comply. The failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: June 25, 2018

DocuSigned by:



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LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings