BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. LOWELL JOINT SCHOOL DISTRICT,	OAH Case No. 2015100100
LOWELL JOINT SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2015100387 ORDER FOLLOWING PREHEARING CONFERENCE

On March 25, 2016, a telephonic prehearing conference was held before Administrative Law Judge Marian H. Tully, Office of Administrative Hearings. Attorneys Jennifer Guze Campbell and Jessica Villegas appeared on behalf of Student. Attorney Adam J. Newman appeared on behalf of Lowell Joint 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 April 5, 6 and 7, 2016, and continue day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at the District's offices located at 11019 Valley Home Avenue, Whittier, California 90603. 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. District certified that the facilities used for this case comply with the law.

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 Issue

Did District deny Student a free appropriate public education by failing to assess Student for central auditory processing disorder?

District's Issues

Did District appropriately assess Student in the area of auditory processing through a variety of assessments, such that District is not required to provide, at public expense, an independent educational evaluation for central auditory processing disorder; and

Did District offer Student a FAPE in individualized education programs dated April 22, 2015, May 18, 2015, and October 8, 2015?

Student seeks an order that District's assessments were not appropriate to address Student's disability of central auditory processing disorder, and to require District to provide an independent assessment for central auditory processing disorder at public expense and timely hold an IEP team meeting upon completion of the assessment. District seeks an order finding District appropriately assessed Student in the area of auditory processing such that Student is not entitled to an IEE at public expense and that the IEP's dated April 22, 2015, May 18, 2015, and October 8, 2015 offered Student a FAPE.

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 meet and confer on or before 5 p.m. March 31, 2016, to develop a witness list and the order of witnesses. The list shall be provided to the ALJ on the first day of hearing. District shall provide contact information for Student's witnesses not under District's control including Allison Carson and Deborah Neuhoff on or before March 31, 2016 and Louie Interiano by close of business March 25, 2016.

The parties shall attempt to reach agreement on a witness list for the first day of hearing. The District 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.

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. 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. If a witness is to be called by more than one party, the party first conducting cross-examination of that witness shall include in that examination all questions intended for the witness on direct examination, in order that each witness need appear and testify only once.

6. Telephonic Testimony. District moves to allow Deborah Neuhoff to testify telephonically. Student did not object. 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 with all of each party's exhibits prior to the hearing; shall arrange for the testimony to be taken in a private location with no other persons present; 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.

District's motion to allow Deborah Neuhoff to testify telephonically is granted. The witness will not be permitted to testify by telephone unless all of the above conditions are met. District reserved the right to file a motion for telephonic testimony from Claudia Evert if that witness is to be called and is unable to testify in person.

7. Electronic Recording of Hearing.

a. Audio Recording. Student's motion to make an audio recording of the Prehearing Conference was denied. A transcript of the official recording may be requested.

Student's motion to make an audio recording of the hearing for counsel's personal use in hearing preparation is granted, subject to the following conditions: 1) that OAH's recording is the only official recording; 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; 3) that operation of the party's recording mechanism will not be allowed to delay the hearing; and 4) the recording will not be shared with or played to any potential witness; and is subject to the same confidentiality as the due process hearing. If District wants to make such a recording, District shall move for leave to do so in advance of the hearing, and the same conditions shall apply.

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].) In this consolidated matter, Student's case was designated the primary case and Student shall present its case-in-chief, followed by District.

9. Motions.

District's Motion to Quash Subpoena Duces Tecum

District's Motion to Quash Subpoena Duces Tecum is addressed by a separate Order.

Student's Motion to Preclude Expert Testimony

On March 24, Student filed a motion in limine to bar any expert witness from offering any opinion on the grounds District did not adequately disclose the addresses of the expert and subject matter of the expert testimony. Student does not identify which witnesses Student seeks to bar. In this case, both parties include at least eight of the same percipient witnesses that may also be experts in their respective fields and neither party includes a summary of any opinions that might be offered. For example, the director of special education, the school nurse, a special education and a general education teacher, the speech pathologist, a school psychologist, an occupational therapist, and an assistive technology consultant are on both lists and the subject matter of proposed testimony from each witness on both District's list and Student's list is the same. District substantially complied with the Scheduling Order issued by OAH in this case and none of the discovery procedures provided in the Federal Rules of Civil Procedure cited by Student apply. The motion is denied.

No other 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 March 35, 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 requested an interpreter or any 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/Accommodations.aspx

14. Hearing 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.

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

DATE: March 25, 2016

DocuSigned by:
June Lehrman
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MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings