BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN LORENZO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015091115 ORDER FOLLOWING PREHEARING CONFERENCE

On November 13, 2015, a telephonic prehearing conference was held before Administrative Law Judge Dena Coggins, Office of Administrative Hearings. Gail Hodes, Attorney at Law, appeared on behalf of Student. M. Alejandra Leon, Attorney at Law, appeared on behalf of San Lorenzo 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 November 19, November 23, and November 24, 2015. The hearing shall continue day to day, Monday through Thursday, at the discretion of the ALJ. The hearing will take place at San Lorenzo's offices located at 15510 Usher Street, San Lorenzo, California, 94580-1623. The hearing will begin at 9:30 a.m. on the first day of hearing. On November 23, the hearing will begin at 1:30 p.m. On all other days, the hearing will begin at 9:00 a.m., unless otherwise ordered.

San Lorenzo is 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. San Lorenzo shall inform OAH within two business days of the date of this order it is able to certify that it will provide a facility that complies with the law.

Prior to the beginning of the hearing, San Lorenzo shall assist the ALJ in ensuring that the hearing room is configured into a courtroom setting, including (1) a table for Student and his representatives; (2) a table for San Lorenzo's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. San Lorenzo shall also make reasonable effort to ensure that drinking water and tissue are available to all parties, witnesses and the ALJ.

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 1: Did San Lorenzo deny Student a free appropriate public education by failing to assess Student during the 2013-2014 school year, beginning September 25, 2013, in the following areas of suspected disability:

a. speech and language;

b. academics;

c. social and emotional functioning; and

d. occupational therapy needs?[1]

Issue 2: Did San Lorenzo deny Student a FAPE by failing to assess Student during the 2014-2015 school year, in the following areas of suspected disability:

a. speech and language;

b. academics;

c. social and emotional functioning; and

d. occupational therapy needs?

Issue 3: Did San Lorenzo deny Student a FAPE by failing to assess Student during the 2015-2016 school year, in the following areas of suspected disability:

a. speech and language;

b. academics;

[1] Student asserted that health should be added to this issue as an additional area of suspected disability. San Lorenzo objected to adding health as an additional area of suspected disability because it was not properly pled in the complaint. The ALJ agreed Student had not properly pled health as an additional area of suspected disability, and health was not added to this issue.

c. social and emotional functioning; and

d. occupational therapy needs?

Issue 4: Did San Lorenzo deny Student a FAPE by failing to make him eligible for special education and related services from May 24, 2014, to the time of hearing as a student with a speech and language disability, other health impairment, and specific learning disability?

Issue 5: Did San Lorenzo deny Student a FAPE by failing to provide an appropriate educational program to meet his individual and unique needs from September 2013, to the time of hearing, by failing to provide Student with:

a. appropriate academic support;

b. appropriate occupational therapy support;

c. appropriate behavior support[2];

d. appropriate supervision for safety awareness issues; and

e. an emergency plan for Student regarding his severe health risk of anaphylactic allergic reaction?

Issue 6: Did San Lorenzo violate Parent's and Student's procedural rights by failing to fund a psychoeducational independent educational evaluation for Student pursuant to Parent's November 20, 2014 request?

Issue 7: Did San Lorenzo violate Parent's and Student's procedural rights by failing to provide Parent with a full and complete copy of Student's educational records, including, but not limited to, report cards, test results, meeting notes, correspondence between San Lorenzo and Parent, and behavior logs, pursuant to Parent's March 2015 requests?

Student's Proposed Resolution:

a. San Lorenzo shall deem Student eligible for special education.

b. San Lorenzo shall fund independent educational evaluations in all areas of suspected disability, including: academics, social and emotional functioning, occupational therapy needs, and assistive technology needs.

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[2] San Lorenzo asserted that it was not on notice of Student's allegation that San Lorenzo denied Student a FAPE by failing to provide Student behavior support from September 2013, to the time of hearing. However, the ALJ ruled that the facts relating to this allegation were sufficiently pled in Student's complaint.

c. San Lorenzo shall provide Student with compensatory education in all areas of need, including, but not limited to, intensive one-to-one academic instruction and/or educational therapy, behavior support, and speech and language.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall have different colored binders. 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). The parties stipulated to extending the deadline to exchange exhibits to **no later than November 16, 2015**. 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. 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 timely disclosed except for good cause shown, 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. San Lorenzo 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).) Neither party requested permission for any witness to appear telephonically. Any party seeking to present a witness by telephone shall move in advance of the hearing 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. Audio Recording. Neither party requested to make an audio recording of the hearing. If either party desires to make such a recording, the party shall move for leave to do so in advance of the hearing, and the same conditions shall apply. Audio recordings are 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; 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 is the petitioning party. Accordingly, Student shall present its case-in-chief, followed by San Lorenzo.

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 November 13, 2015.

10. Compensatory Education. 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. A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the 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. 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: November 13, 2015

/s/

DENA COGGINS
Administrative Law Judge
Office of Administrative Hearings