BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013101124 ORDER FOLLOWING PREHEARING CONFERENCE

On February 21, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Eileen Cohn, Office of Administrative Hearings (OAH). Parents appeared on behalf of Student. OAH provided Parents with simultaneous Spanish-language interpretation of the PHC by an OAH-retained interpreter. Donald A. Erwin and Joanne Kim, Attorneys at Law, appeared on behalf of District. The PHC was recorded.

Based on discussion of the parties, the ALJ issues the following order:

1. Hearing Dates, Times, and Location. The hearing shall take place on March 4, 2014 through March 6, 2014, and continuing day to day thereafter, Monday through Thursday as needed, at the discretion of the ALJ. Unless otherwise ordered, the first day of hearing shall begin at 9:30 a.m., and subsequent hearing days shall begin at 9:00 a.m.

The hearing shall take place at the offices of OAH, 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 was not properly notified of the hearing date or properly subpoenaed, as applicable.

2. **Issues and Proposed Resolutions**. The ALJ reviewed with the parties the issues as pleaded in Student's complaint and determined that the following issues are within the scope of Student's complaint.

A) Whether District denied Student a free and appropriate public education (FAPE) by incorrectly designating Student as eligible for special education under the category of autism instead of speech and language impairment (SLI)?

B) Whether District denied Student a FAPE at the October 11, 2013 individual education program (IEP) team meeting by offering an inappropriate placement in a special day class (SDC) autism program, which also requires Student to change schools?

District is on notice that the determination of Issue A may require a review of the appropriateness of District's assessments that were prepared and reviewed either at the June 2013, or the October 11, 2013 IEP team meeting.

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. 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.

A. **Telephonic meeting (meet and confer) on February 27, 2014 at 1 p.m.** The witnesses were discussed extensively at the PHC. The ALJ ordered the parties to meet and confer telephonically on February 27, 2014 at 1 p.m., to finalize their witness list and to prepare a daily schedule of witnesses that will be presented to the ALJ the first morning of the hearing.

District shall initiate the telephone call and Parents shall be available at the telephone number they provided to the District at the PHC. District shall use a Spanish-language interpreter to assist the parties at the telephonic meeting.

The District shall present the joint witness list and schedule to the ALJ the first day of hearing and the ALJ shall finalize the witness schedule at the commencement of the due process hearing.

B. **District shall produce District witnesses and Student shall produce all other witnesses identified in his PHC statement for his case in person or by telephone.** District is responsible for producing witnesses that it employs or contracts with as long as Student makes a reasonable and timely request, no later than February 27, 2014 at 1 p.m., for District witnesses.

Student has identified the following District witnesses on its witness list that he intends to call. Michelle Markiz-Troshhinky, Marina Salas, Susan Tokmakoff.. .

Student also notified OAH after the PHC that he intends to call an additional District witness, Carlos Velasquez, Assistant to Ms. Janet Lewis. Student identified other witnesses in his PHC statement and shall notify District at the meet and confer whether he intends to call these witnesses.

C. **Other than District employees or contractors, Student is required to procure witnesses identified in his PHC statement, including doctors and employees of Kaiser. Student is ordered to contact and confirm the attendance of his witnesses at hearing from Kaiser and notify District of their attendance by Februray 25, 2014, or no later than February 27, 2014, 1 p.m. at the telephonic meeting. Student must notify District when his witnesses are available to testify during the hearing and whether they will appear in person or by telephone.**

Student identified witnesses from Kaiser Permanente that he intends to call, including Jessica Law, Thomas Duke, Kek-Khee Lo, M.D., Andrea Moeller. Student is responsible for securing the attendance in person or by telephone of each witness and providing them with the exhibits if they are appearing by telephone.

D. **District identified the following witnesses** that it intends to call subject to the final determination of issues: Jane Lewis, Trenisha Carrington, Steven Baker, Susan Tokmakoff, Bruno Serrano and Thais Cho, (special education teacher). District identified other potential witnesses in its PHC statement and will notify Student at the meet and confer whether the other witnesses will be testifying.

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 PHC 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 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 of each such witness is expected to take.

5. Scope of Witness Examination. 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.

6. Telephonic Testimony. The parties shall notify the ALJ the first morning of the hearing witnesses who shall be testifying by telephone and the schedule for their appearances. Whether a witness may appear by telephone is a matter within the discretion of the ALJ. Cal. Code Regs., tit. 5, § 3082, subd. (g). The proponent of the witness shall provide the proposed witness(es) with a complete set of exhibits from all parties. No witness will be heard by telephone unless they have exhibits relevant to their testimony.

7. Timely Disclosure of Witnesses/Exhibits. The parties shall timely exchange exhibits. Education Code section 56505, subdivision (e)(7), provides for disclosure of witnesses and exhibits "at least" five business days prior to the hearing.

8 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 February 21, 2014.

9. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

10. 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.

11. 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.

12. Special Needs and Accommodations. A Spanish-language interpreter is required for Parents. Otherwise, neither party anticipates the need for special accommodation for any witness or party.

13. Hearing Closed To the Public. The hearing will be closed to the public.

14. 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.

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

IT IS SO ORDERED.

DATE: February 25, 2014

/s/

EILEEN COHN
Administrative Law Judge
Office of Administrative Hearings