BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: LOS ANGELES UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2016031273 ORDER FOLLOWING PREHEARING CONFERENCE OF MAY 23, 2016

On May 23, 2016, a telephonic prehearing conference was held before Administrative Law Judge Robert Helfand, Office of Administrative Hearings. Mary Kellogg, Attorney at Law, appeared on behalf of Los Angeles Unified School District. Michael Smith, Attorney at Law, appeared on behalf of Parents on behalf of Student. 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 June 7-9, 2016, and continuing day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at the OAH offices located at 15350 Sherman Way, Suite 300, Van Nuys CA 91406. 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.

2. Issues and Proposed Resolutions. The issues at the due process hearing, and the proposed resolutions, are listed below:

1. Is District's August 12, 2015 pscychoeducational assessment appropriate such that Student is not entitled to an Independent Education Evaluation at public expense?

2. Is District's August 12, 2015 physical therapy assessment appropriate such that Student is not entitled to an IEE at public expense?

3. Is District's August 12, 2015 occupational therapy assessment appropriate such that Student is not entitled to an IEE at public expense?

4. Is District's August 12, 2015 language and speech assessment appropriate such that Student is not entitled to an IEE at public expense?

5. Is District's August 12, 2015 academic assessment appropriate such that Student is not entitled to an IEE at public expense?

District seeks an order from OAH declaring that the August 12, 2015 assessments were appropriate so that Student is not entitled to IEE's at public expense.

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.

District lists the following as witnesses: Student's parents, Michael Hovaguinian, Susan Ismail, Michelle Troshinsky, Janelle Sheiner, Teresa Van Vranken, Veronica Tallman, and Diana Dominguez.

Student lists the following as witnesses: Student's parent, Michael Hovaguinian, Susan Ismail, Veronica, Tillman, Janelle Sheiner, Michelle Troshinsky, Alusine Conteh, and Art Ghazarian.

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).) 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 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. 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, District is the petitioning party. Accordingly, District shall present its case-in-chief, followed by Student.

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 this prehearing conference.

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. Special Needs and Accommodations. Student's parents require that a Spanish interpreter be present.

There have been no other requests for accommodations for special needs. A 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/Accessibility.aspx.

12. Hearing Closed To the Public.

13. 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.

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

IT IS SO ORDERED.

DATE: May 24, 2016

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ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings