BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
LODI UNIFIED SCHOOL DISTRICT,	OAH Case No. 2016100923
v.	ORDER FOLLOWING PREHEARING CONFERENCE
PARENT ON BEHALF OF STUDENT.	

On November 21, 2016, a telephonic prehearing conference was held before Administrative Law Judge Penelope Pahl, Office of Administrative Hearings. Aimee M. Perry, Attorney at Law, appeared on behalf of Lodi Unified School District. Father appeared on behalf of student. Also present was SELPA Director Jonathon Martin, who participated on behalf of Lodi. The undersigned made three attempts to reach Mother at the telephone number provided for her: once shortly after 1:00 p.m., once at 1:10 p.m. and once at 1:15 p.m.. Each time the telephone was answered by an automated system informing the caller that the mailbox was full and the call was therefore being disconnected. The PHC continued in Mother's absence and was recorded.

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

1. Hearing Dates, Times, and Location. Lodi's request to change venue is granted. The hearing shall take place at Needham Elementary School, Transition Side, Room 8, located at 420 S. Pleasant Street, Lodi, CA 95240. The hearing shall take place on November 29, 30 and December 1, 2016, and continue day-to-day thereafter, Monday through Thursday, at the discretion of the ALJ. The hearing shall begin at 9:30 a.m. the first day of hearing and at 9:00 a.m. on all other days, unless otherwise ordered.

As ordered in the scheduling order, Lodi 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. On November 18, 2016, Lodi certified that the facilities to be used for this case comply with the law.

Prior to the beginning of the hearing, Lodi shall ensure that the hearing room is configured into a courtroom setting and shall have at a minimum (1) a table for Student and his representatives; (2) a table for Lodi's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical

outlet. Lodi shall provide drinking water and have tissue available to all parties, witnesses and the ALJ. Unless otherwise ordered, the same hearing room shall be used for each day of hearing and shall be available at least one hour prior to the commencement of the hearing each day. The hearing room shall be locked at lunch breaks and following the hearing each night. As discussed in the Pre-Hearing Conference, Lodi shall ensure the room selected for the hearing is placed to minimize noise and other potential interferences or interruptions that might impact the creation of a clear and complete record of the proceedings. 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 single issue to be considered is: "Was the District's May 11, 2016 Individualized Education Program a free and appropriate public education in the least restrictive environment such that Lodi may implement the IEP without parental consent?"

As resolutions, Lodi seeks an order 1) finding that Lodi offered Student a FAPE in the LRE in the May 11, 2016 IEP; 2) allowing Lodi to implement the IEP without parental consent; and 3) declaring Lodi the prevailing party.

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 in a way that clearly identifies the party offering it (such as "S1" or "D2"). 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.

As of the time of the PHC, Lodi had already served Mother and Father separately with copies of its exhibits in a binder and Witness and Exhibit lists in compliance with Education Code section 56505, subdivision (e)(7). Father acknowledged that he had not served exhibits or witness lists to Lodi and Lodi stated none had been received from Mother. Lodi agreed to accept service of all exhibits, as well as a Witness List and Exhibit List no later than 10:00 a.m. on Tuesday November 22, 2016 and Parents were ordered to ensure service by that date and time. 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.

a) Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available to the other party. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses twice or 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.

b) Counsel for Lodi stated that she intended to call 6 witnesses. The parties shall attempt to reach agreement on a witness list for the first day of hearing and to that end have been ordered to meet and confer no later than close of business on Monday, November 28, 2016 to develop a witness list that will project the dates and times that witnesses will testify for each day of the hearing. Evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear. Lodi 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 and Order 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. The order in which the parties present their cases in chief shall be subordinate to the need for each witness to appear only once, so the parties shall establish their cases in chief during the first appearance of a witness. 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. 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, Lodi requested the hearing and shall present its case-in-chief first, followed by Student.

7. Telephonic Testimony. No party requested telephonic testimony.

8. Electronic Recording of Hearing.

a. Audio Recording. Lodi's request to make an audio recording of the hearing is granted subject to the following conditions: 1) OAH's recording is the only official recording; 2) 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) no part of the

recording shall be played to any witness or potential witness while the hearing is proceeding; and 4) operation of the party's recording mechanism will not be allowed to delay the hearing. If Student desires to record the hearing he may after notifying the ALJ and other party and shallbe subject to the same conditions.

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.

9. Motions. At present no prehearing motions are pending or contemplated. Any motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not made prior to or during this prehearing conference.

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

11. 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.

12. Special Needs and Accommodations.

At present neither party anticipates the need for special accommodation for any witness or party, or for the services of an interpreter. A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk identified in the scheduling order, at (916) 263-0880, or theOAH ADA Coordinator at OAHADA@dgs.ca.gov or 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.

13. Hearing Closed To the Public. At the request of Parents, the hearing will be closed to the public.

14. Settlement. The parties are encouraged to continue their attempts 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, given the impending Thanksgiving holiday, the parties shall immediately inform OAH of any 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 showing all required signatures 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.

Dated: November 22, 2016

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Penelope S. Pahl
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PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings