BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. POWAY UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2013020661
POWAY UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2012100261 ORDER FOLLOWING PREHEARING CONFERENCE

On April 8, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Susan Ruff, Office of Administrative Hearings (OAH). Marcy Tiffany, Attorney at Law, and Amy Langerman, paralegal, appeared on behalf of Student and Student's parent (Student). Sundee Johnson, Attorney at Law, appeared on behalf of the Poway Unified School District (District). The PHC was recorded.

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

1. Hearing Dates, Time, and Location. The hearing shall be held on April 16 and 17, 2013, at 9:30 a.m., and shall continue day to day, Monday through Thursday, as needed at the discretion of the ALJ.

The hearing shall take place at the District's offices located at 15250 Avenue of Science, San Diego, California 92128.

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. The issues at the due process hearing are listed below.

a) District's issue: May the District assess Student in the area of cognitive ability as part of Student's triennial assessment?

b) Student's first issue: Did the District fail to assess Student in all suspected areas of disability/need by failing to assess Student in the area of auditory processing?

c) Student's second issue: May the District administer the Kaufman Assessment Battery for Children – Second Edition (KABC-II) to Student?

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. Student shall use letters to designate exhibits and the District shall use numbers. Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be consecutively paginated, for example by Bates-stamping. 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.

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.

5. 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.

6. Order of Presentation of Evidence. This matter is consolidated, and involves two parties. The order of presentation of evidence shall be as follows: the District will present its case-in-chief first, and Student will present his case-in-chief second.

7. 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 PHC.

8. 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.

9. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for translation services.

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

11. 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.

IT IS SO ORDERED.

Dated: April 8, 2013

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings