BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: LAWNDALE ELEMENTARY SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013070160 PREHEARING CONFERENCE ORDER

On September 16, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Elsa H. Jones, Office of Administrative Hearings (OAH). Debra K. Ferdman, Attorney at Law, of Atkinson, Andelson, Loya, Ruud & Romo, appeared on behalf of Lawndale Elementary School District (District). There was no appearance by Parent on behalf of Student (collectively, Student). When convening the duly noticed telephonic PHC, the ALJ attempted to contact Parent at the two phone numbers in the file. At one such phone number, the ALJ's call was answered by a recorded message stating that no voicemail message could be left at that time. The ALJ's call to the second phone number was answered by an individual who advised that Student's family did not reside at that number, and he did not know Student's family. The ALJ confirmed with Ms. Ferdman, District's counsel, that those two telephone numbers were the only telephone numbers that the District had for Student.

Based on discussion with District's counsel, the ALJ issues the following Order:

1. Hearing Dates, Times, and Location. The hearing shall take place on September 23 through September 26, 2013, and shall continue day to day, Monday through Thursday as needed, at the discretion of the ALJ. The first day of hearing shall begin at 1:30 p.m., and, unless otherwise ordered, all remaining hearing days shall begin at 9:30 a.m. At the request of District's counsel, each hearing day shall conclude by no later than 4:30 p.m. The hearing shall take place at the District's offices, located at 4161 W. 147th Street, Lawndale, California 90260.

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 has not properly notified of the hearing date or properly subpoenaed, as applicable.

2. Issues and Proposed Resolutions. The issues at the due process hearing are:

A. Whether the District's occupational therapy (OT) assessment of February 27, 2013, was appropriate such that Student is not entitled to an independent educational evaluation (IEE) at District's expense;

B. Whether the District's psychoeducational assessment of February 20, 2013, was appropriate such that Student is not entitled to an IEE at District's expense;

C. Whether the District's speech and language (LAS) assessment of February 12, 2013, was appropriate such that Student is not entitled to an IEE at District's expense;

D. Whether the District's adaptive physical education assessment of February 14, 2013, was appropriate such that Student is not entitled to an IEE at District's expense; and

E. Whether the District's academic assessment of February 6, 2013, was appropriate such that Student is not entitled to an IEE at District's expense.

3. Exhibits. Exhibits shall be pre-marked and tabbed 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 number to designate whether it is a Student or District exhibit (for example, "S-5, S-6, or D-1, D-2"). To the extent practical, each exhibit shall be internally paginated by exhibit, or all of a party's exhibits should be consecutively numbered by Bates stamp or other similar method. Each exhibit binder shall contain a detailed table of contents. The parties shall exchange their exhibit binders pursuant to 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.

Unless used solely for rebuttal or impeachment, any exhibit not included in a party's exhibit list, and not previously exchanged, shall not be admitted into evidence at the hearing at the request of that party except for good cause shown, and at the discretion of the ALJ, and unless the ALJ rules that it is admissible.

4. Witnesses. The parties shall exchange their witness lists pursuant to Education Code section 56505, subdivision (e)(7). 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**.** No party shall be permitted to call any witnesses not disclosed in that party's final witness list except for good cause shown, and at the discretion of the ALJ.

The parties are notified that evidence will be excluded if, without limitation, it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear.

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. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

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, at the discretion of the ALJ.

6. Motions. No pretrial motions are pending or contemplated.

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

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 placed on the vibrate setting during the hearing unless permission to the contrary is obtained from the ALJ. There shall be no texting during the hearing unless the ALJ grants permission.

9. 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.

10. Special Needs and Accommodations. At present, there is no need for special accommodation for any witness or party, or for interpreter services.

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. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

12. Failure to comply with this Order and with Education Code section 56505, subdivision (e)(7), may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

Dated: September 17, 2013

/s/
ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings