BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: POWAY UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2015030732 ORDER FOLLOWING PREHEARING CONFERENCE

On May 4, 2015, a telephonic prehearing conference was held before Administrative Law Judge Susan Ruff, Office of Administrative Hearings. Justin Shinnefield, Attorney at Law, appeared on behalf of the Poway Unified School District. Student's father appeared on behalf of Student. 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 May 13, and 14, 2015, and continuing day to day thereafter, Monday through Thursday, as needed at the discretion of the ALJ. The hearing shall begin at 9:30 a.m. each day, unless otherwise ordered.

The hearing shall take place at the District's offices located at:

15250 Avenue of Science
San Diego, CA 92128

The school district shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.

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

a) Was Poway's psychological assessment dated April 23, 2014, appropriately conducted, such that Student is not entitled to an independent educational evaluation at public expense?

b) Was Poway's academic skills assessment dated April 11, 2014, appropriately conducted, such that Student is not entitled to an independent educational evaluation at public expense?

Poway's proposed resolution is a finding that the two assessments were appropriately conducted and that Student is not entitled to an independent educational evaluation at public expense.

3. Exhibits. Poway's exhibits shall be pre-marked and placed in a three-ring exhibit binder prior to the hearing. The exhibit binder shall contain a detailed table of contents. Each of Poway's exhibits shall be paginated, either internally by exhibit, or consecutively paginated, for example by Bates-stamping.

During the PHC, Student's father stated that Student will be relying on Poway's exhibit list for the hearing. However, should Student's father believe that any other exhibits are necessary for the hearing, he will immediately provide Poway's attorney with a copy of those exhibits and shall bring copies to the hearing.

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.

Poway plans to call the following witnesses in its case-in-chief: Ms. Klock, Ms. Felker, and Ms. Howard. Student plans to call Dr. Jill Weckerly, but may call additional witnesses, if Poway calls more witnesses than the three mentioned in this paragraph.

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. 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.

Student's motion to allow Dr. Jill Weckerly to testify telephonically is granted. If Dr. Weckerly will be testifying telephonically, Student's father shall provide her with a copy

of the binder containing all of Poway's exhibits prior to the hearing. Poway shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness.

7. Motions. No pretrial motions are pending or contemplated by either party.

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

9. 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. **There shall be no audio or video recording of any type or any photography during the hearing without the express permission of the ALJ hearing the case.**

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

A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned case manager at (916) 263-0880, or the OAH ADA Coordinator at OAHADA@dgs.ca.gov or 916-263-0880 as soon as the need is made known. Additional information concerning requests for reasonable accommodation is available on OAH's website at:

http://www.dgs.ca.gov/oah/Home/Accommodations.aspx

11. Hearing Open To the Public. At the request of the parent, the hearing will be open to the public.

12. 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.

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

IT IS SO ORDERED.

DATE: May 5, 2015

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings