BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013050219 ORDER FOLLOWING PRE-HEARING CONFERENCE

On June 13, 2013, District filed a motion to continue the matter due to the unavailability of an indispensable witness who was out of the country until July 6, 2013. Student did not file opposition to the motion.

On June 19, 2012, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Stella L. Owens-Murrell, Office of Administrative Hearings (OAH). Father appeared on behalf of Student. Donald Erwin, Attorney at Law, appeared on behalf of District. Father did not file a PHC statement. District's motion was granted for good cause and the PHC was continued to July 8, 2013 with hearing dates on July 16-18, 2013. Father was also ordered to file a PHC statement three business days before the PHC. OAH served the PHC Order by mail on June 20, 2013.

On July 8, 2013, a second telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Stella L. Owens-Murrell, Office of Administrative Hearings (OAH). Father appeared on behalf of Student. Donald Erwin, Attorney at Law, appeared on behalf of District. The PHC was not recorded.

Father again failed to file a PHC statement. Father's explanation for failing to comply with the June 19, 2013 PHC was that he was going to start looking for an attorney. Father was ordered to file a PHC statement by close of business on July 9, 2013 and to file a written request for a continuance setting forth good cause for a continuance. The PHC went forward with District's PHC statement. Based on discussion of the parties, the ALJ issues the following order:

1. Hearing Dates, Times, and Location. The hearing shall take place on July 16-18, 2013, at 9:30 a.m. to 4:30 p.m. at the offices of OAH located at 15350 Sherman Way, Suite 300, Van Nuys, CA 91409, and continuing day to day, Tuesday through Thursday as needed at the discretion of the ALJ, unless otherwise ordered.

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) Did District deny Student a free appropriate public education (FAPE) from August 2011 to May 6, 2013 by:

1. Failing to provide an appropriate transition plan and transition goals; and
2. Failing to provide appropriate instruction and services?

b) Did District commit a procedural violation that denied Student a FAPE by failing to include Parents as IEP team members for the April 1, 2011, IEP?

c) Did District deny Student a FAPE because Student's placement was changed by his graduation at the end of the 2012-2013 school year.

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. District represents that it has served the evidence binders on Student 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.

Father on behalf of Student is ordered to file a PHC statement with exhibit and witness list and to serve the statement, exhibit, and witness lists on District by 5 p.m., close of business July 9, 2013. 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. Failure to file the PHC statement as ordered may result in the issuance of an Order to Show Cause why Student's Complaint should not be dismissed.

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 has identified 11 witnesses to be called at the hearing, and has identified two expert witnesses-Joan Kelleher and Christy Holcombe. District is ordered to serve their resumes or curriculum vitae before no later than Wednesday July 10, 2013 District also requested that witness Greg Gilliland be scheduled to testify on July 23, 2013 because the witness will be on vacation in Hawaii. The request was denied because District has already been granted a continuance based upon witness availability and District failed to mention this witness in its June 13, 2012 motion. District is ordered to schedule the witness to testify by telephone. Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. 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.

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. District's request to allow Christy Holcombe to testify telephonically is granted. District shall provide the witness with a complete exhibit binder from each party, containing all of each party's exhibits, prior to the hearing.

7. Motions. Student may file a request for continuance. 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 prehearing conference of July 8, 2013.

8. Stipulations. None

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.

10. 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.

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

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.

Dated: July 08, 2013

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings