BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: LOS ANGELES UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013090194 (primary)
PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013071175 ORDER FOLLOWING PRE-HEARING CONFERENCE

On September 23, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Stella L. Owens-Murrell, Office of Administrative Hearings (OAH). Parent, appeared on behalf of Student. Spanish-language interpreter Miguel Rojas assisted Parent. Diane Willis, Attorney at Law, appeared on behalf of District. 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 October 8-10, 2013 at the offices of the Office of Administrative Hearings located at 15350 Sherman Way, Suite 300, Van Nuys, CA 91406, and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin each day at 9:30 a.m. and end at 4:30 p.m., 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 and Proposed Resolutions. The issues at the due process hearing are listed below.

Student's Issues

a) Whether District denied Student a free appropriate public education (FAPE) in the July 10, 2013 individualized education program (IEP) by failing to offer adequate designate instructional services (DIS) in physical therapy (PT), specifically the duration and frequency of services

b) Whether District denied Student a FAPE in the July 10, 2013 IEP by failing to offer adequate DIS in occupational therapy service (OT) specifically the duration of services

c) Whether District denied Student a FAPE in the July 10, 2013 IEP by failing to offer appropriate DIS in speech and language (LAS), specifically the type, duration, and frequency of services.

District's Issue

a) Whether District's initial LAS assessment conducted on May 30, 2013, was appropriate such that Student is not entitled to an independent educational evaluation (IEE) at District expense.

Proposed remedies of the parties are set forth in their respective due process hearing requests.

3. Exhibits. District and Student will have joint exhibits consisting of District's psychoeducational, OT, PT, and LAS assessments. District has agreed to prepare the joint exhibits. District has also been ordered to provide resumes and/or curriculum vitae for its expert witnesses identified in paragraph 4 below. Student is ordered to prepare the remaining exhibits on his exhibit list as ordered below. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing and to serve District's attorney by no later than October 1, 2013 with the independent private speech and language assessment just obtained by Student but not yet received by Student.

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. The parties represent that they have served their evidence binders on each other 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.

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.

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. The parties are encouraged to review and shorten their witness lists prior to the hearing, bearing in mind that evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear.

Student has identified four percipient witnesses to be called at the hearing- Mother, Phyllis Ross, Christie Harris, and "Laura". District has identified 10 witnesses, six of whom will be called as experts. The expert witnesses are as follows: Phyllis Ross, Christie Harris, Gerardo Duarte, Rachael Hayman, Grant Hirahara, and Negar Zivari. Some of the witnesses are listed by both parties. 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.

Student has indicated that he may request telephonic testimony of the witness called "Laura" who recently conducted and prepared a private independent speech and language assessment**.** Student has been ordered to submit such a request in writing prior to or at the hearing as soon as it is determined he will need to call the witness.

7. Timely Disclosure of Witnesses/Exhibits. Education Code section 56505, subdivision (e)(7), provides for disclosure of witnesses and exhibits "at least" five business days prior to the hearing. Student has been ordered to provide the full name and title of the

person who conducted the private independent speech and language assessment along with a copy of the private independent speech and language assessment to District's attorney no later than October 1, 2013. Both parties are further ordered to prepare and file amended prehearing conference witness and exhibit lists which must be filed no later than October 1, 2013.

8. Order of Presentation of Evidence. This matter is consolidated. The order of presentation of evidence shall be as follows: Student will present his case first. District will present its case second.

9. 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 prehearing conference of September 23, 2013

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. Compensatory Education/Reimbursement. None requested

13. Special Needs and Accommodations. Parent will require the services of a Spanish Language interpreter.

14. Hearing Open/Closed To the Public. The hearing is closed

15. 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.

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

IT IS SO ORDERED.

Dated: September 23, 2013

/s/
STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings