BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: SANTA RITA UNION SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH CASE NO. 2013010390 ORDER FOLLOWING PREHEARING CONFERENCE

On April 3, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Peter Paul Castillo, Office of Administrative Hearings (OAH). Deborah Ungar Ettinger, Attorney at Law, appeared on behalf of Santa Rita Union School District (District). Parents appeared on behalf of Student. Miguel Rojas provided Spanish language interpretative services for Parents. The PHC was recorded

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

1. Hearing Dates, Times, and Location. The due process hearing shall take place on April 9 and 10, 2013. The hearing shall begin at 9:00 a.m. and end at 5:00 p.m., except for April 9, 2013 when the hearing shall begin at 9:30 a.m., unless otherwise ordered. The hearing shall take place at the District's offices, located at 57 Russell Road, Salinas, California 93906.[1]

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.

[1] At a minimum for the hearing, the room shall have separate tables capable of being moved into a courtroom configuration, as follows: (1) one table for Student's representatives; (2) one table for the District's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table. The District shall ensure that all parties and the ALJ have drinking water available to them.

2. Issues and Proposed Resolutions. The issues at the due process hearing are listed below.[2]

Issue: Whether the District may exit Student from special education eligibility under the category of speech and language impairment and cease providing Student with speech and language services?[3]

Proposed Resolution: The District seeks an order that Student is no longer eligible for special education under the category of speech and language impairment and it may cease providing Student with speech and language services.

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. The District has provided Student with a copy of its exhibit binder in compliance with Education Code section 56505, subdivision (e)(7). Notwithstanding the requirements of Education Code section 56505, subdivision (e)(7), while Student has not provided the District with a copy of its exhibits, Student will be permitted to introduce at hearing the June 2010 assessment of Dr. Maria Moleski. 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 to the other party without a subpoena. 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

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[2] During the PHC, District did not move to amend its complaint and no amendment was permitted by this Order. Any motion to amend a Due Process Complaint, shall comply with California Education Code section 56502, subdivision (e). If granted, the filing of an amended complaint would restart the applicable timelines for a due process hearing. (20 U.S.C. § 1415(c)(2)(E)(ii).)

[3] Student is also eligible to receive special education services under the category of other health impaired, and there is no dispute that Student continues to be eligible for special education services under that category.

prehearing conference statement except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

By 1:00 p.m. on April 8, 2013, each party shall serve on the other party and on the ALJ, the final witness list, including the anticipated order of the witnesses to be called at the hearing, an estimate of the length of time for the direct examination of each witness the party actually intends to call, along with time estimates for the testimony of any additional witnesses the party may call, depending on the flow of the hearing and the evidence.[4] 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. 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.

The following witnesses will be called to testify by the District: Deborah Bradford, Jorge Quinonez, Melissa DiPasquale, Jillian Munsey, and Elizabeth Swain.

The following witnesses will be called to testify by Student: Parents

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.

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, unless otherwise ordered.

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. Neither party requested telephonic testimony.

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

[4] Parties shall not mail a hard copy of any document to OAH that has already been filed by facsimile transmission.

cause as to why the motion was not made prior to or during the prehearing conference of April 3, 2013.

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 during the hearing unless permission to the contrary is obtained from the ALJ.

10. Special Needs and Accommodations. A Spanish language interpreter is required for Parents. OAH shall provide an interpreter.

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

12. Settlement. The parties are encouraged to continue their attempts 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. If a settlement is reached five business days or fewer before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact by telephone at (916) 263-0880. 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. IF A FULL AND FINAL SETTLEMENT IS REACHED AFTER 5:00 P.M. ON THE LAST BUSINESS DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035, AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. The ALJ will check for messages the evening prior to the hearing and the morning of the hearing.

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

IT IS SO ORDERED.

Dated: April 4, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings