BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: REDLANDS UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013120507 ORDER FOLLOWING PREHEARING CONFERENCE

On February 7, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Sabrina Kong, Office of Administrative Hearings (OAH). Karen Gilyard, Attorney at Law, appeared on District's behalf. Peter Attwood, Student's advocate, and Mother appeared on Student's behalf. 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 February 18, 19, and 20, 2014, and continue day to day, Monday through Thursday, at the discretion of the ALJ, until completed. The hearing shall be held at the Redland Unified School District's boardroom located at 20 West Lugonia, Redlands, CA 92373. The hearing shall begin each day at 9:30 a.m. and end at 4:30 p.m. on all days unless otherwise ordered, with the exception of the first day of hearing which shall begin at 1:30 p.m.

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.[1] The issues at the due process hearing are listed below.

Whether the following District assessments and reports were appropriate:

[1] Student requested that other independent evaluations that he requested from District be included as issues in this hearing. Student was informed that if he wished to include issues outside of those District requested in its due process complaint filing, Student needed to file his own due process complaint, and Student's issues could not be added to District's filing at the PHC.

1. 2013 Adaptive Physical Education;
2. October 2013 Verbal Behavior Milestones Assessment and Placement;
3. October 2013 psycho-educational;
4. October 2013 health update;
5. October 25, 2013 language, speech and hearing;
6. October 27, 2013 Assistive Technology; and.
7. November 15, 2013 Functional Analysis Assessment and Positive Behavior Intervention Plan.

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 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.

The parties shall exchange resumes or curriculum vitae for each witness who is expected to testify as to their professional credentials.

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 exchange of the final witness list at least five business days prior to the hearing, February 10, 2014, except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

The parties are ordered to meet and confer by February 10, 2014, as to the schedule of witnesses and present a witness schedule at hearing pursuant to the example below, to coordinate the availability and order of testimony of witnesses, to ensure that there is a witness available to testify at all times during the hearing, and to ensure that the hearing is completed as scheduled.

Example:

The following witnesses will be called to testify on February 18, 2014:

1. Jane Smith at 10:00 a.m.
2. Bob Jones at 11:00 a.m.

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.

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.

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 District 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. The witness shall testify while in a private room and while using a land-line telephone. No witness will be heard by telephone unless all these requirements have been fulfilled.

Student's motion to allow witnesses to testify telephonically is taken under submission to be ruled upon at hearing. Student represented that telephonic testimony may only be required for a few witnesses, if at all. By no later than close of business on February 10, 2014, Student shall provide District with the identity of witnesses who will be testifying telephonically.

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, February 10, 2014.

8. Order of Presentation of Evidence. The order of presentation of evidence shall be as follows: District's evidence followed by Student's evidence. However, witnesses to be called by both sides shall be questioned on all issues when first called.

9. Motions. Student submitted three requests, two written and one oral, which were treated as motions at the PHC. Student requested in writing that the hearing be open to the public, which was granted. Student also requested in writing that Mother be allowed to participate at the PHC and to question witnesses at hearing in addition to Mr. Attwood's participation in both; both requests were granted. Student was instructed that while both Mother and Mr. Attwood may question witnesses at hearing, no tag-team questioning will be allowed *i.e.* only one person may handle the questioning, including direct, cross-examination and redirect examination, of each witness. Student orally requested a hearing continuance of four days on the basis that District did not produce the raw assessment data and assessment protocols per Mother's January 21, 2014 request for educational records, and on the basis that District did not provide e-mail notice of its due process complaint filing per Mother's request, causing Mother delay in the discovery of District's filing because Mother was in India. District opposed the request to continue. The request to continue was denied. District was ordered to provide to Mother the raw assessment data, to the extent it exists, and the assessment protocols, by no later than the close of business on February 7, 2014.

No other pretrial motions are pending or contemplated, other than the motion for telephonic testimony referenced in paragraph 6. 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 February 7, 2014 prehearing conference.

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. 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.

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

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

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 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: February 07, 2014

/s/

SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings