BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: ASPIRE CENTRAL VALLEY REGIONAL OFFICE, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013040872 ORDER FOLLOWING PRE-HEARING CONFERENCE

On May 8, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Margaret M. Broussard, Office of Administrative Hearings (OAH). Parent appeared on behalf Student and Parents (Student). Ms. Sue Shalvey and Ms. Meghann Cazalle appeared on behalf of Aspire Central Valley Regional Office (District). The PHC was recorded.

Based on discussion with the parties, the following orders are issued:

MOTION TO CONTINUE

On May 6, 2013, Student filed a request with the Office of Administrative Hearings (OAH) to continue the dates in this matter because he was confused about the timing of the exchange of evidence and the PHC. Student also requested a continuance during the PHC because he alleges that the evidence he received from the District for the hearing was in one large pile, without pagination and not in a binder or tabbed and therefore not timely. At first, the District opposed the continuance, but then agreed to a short continuance.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a

party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

After reviewing the request for good cause and considering all relevant facts and circumstances, the request for a short continuance was granted. This matter will be set as follows:

Due Process Hearing:	May 22, 2013, at 9:30 a.m., and continuing on May 23 and 24[1], 2013 at 9:00 am. The hearing will continue day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

1. Hearing Dates, Times, and Location: The hearing shall take place on **May 22, 23, and 24, 2013,** and continue day to day as needed. Unless otherwise ordered, the hearing shall begin at **9:30 a.m.** on May 22, 2013, and at 9:00 a.m. on all other days. The hearing shall be held at **2050 West Lane, #223A, Stockton, California**.

2. Notice to Witnesses: The parties shall immediately notify their witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. 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 the need for a subpoena. A witness will not be regarded as unavailable for purposes of showing good cause to continue the hearing if the witness has not been properly notified of the hearing date or properly subpoenaed, as applicable. The District has agreed to make District witnesses available for the hearing without need for subpoena.

3. Issues: The issue for hearing is limited to that alleged in District's complaint.[2] The issue was discussed during the PHC, and is reframed and clarified below.

I. May the District implement the IEP dated March 5, 2013 without parent consent?

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[1] This ALJ agreed to Friday, May 24 as a hearing date in this matter. However, OAH does not generally set hearings on Fridays. If another ALJ is assigned to this matter, the ALJ may use his/her discretion and vacate May 24, 2013.

[2] The issues in a due process hearing are limited to those identified in the written due process complaint. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).)

4. Proposed Resolutions: The District is asking for the following relief: That OAH find that:

I. The District has made reasonable attempts to ensure that Parents were fully informed and provided opportunities to participate in the process.

II. The March 5, 2013 IEP was procedurally compliant and substantively offers Student a free appropriate public education (FAPE) in the least restrictive environment (LRE).

III. The District may implement the March 5, 2013 IEP without parent consent.

5. Exhibits: Exhibits shall be pre-marked by each party and placed in a three-ring exhibit binder prior to the hearing. The parties' exhibits shall be pre-marked using numbered tabs and accompanied by a detailed exhibit list. Student's exhibit list shall identify each exhibit by number and the designation "S" (e.g., S1), and the District's exhibit list shall identify each exhibit by number along with a "D" (e.g., D1). Any document over five pages in length shall be internally paginated. Each exhibit binder shall contain a detailed table of contents or list of the documents it contains. Each party shall serve an exhibit binder containing its respective exhibits and list on the other party not less than five business days prior to the start of the hearing. [3]

At the hearing, the parties shall supply an additional exhibit binder containing their respective exhibits and lists for use by the ALJ, and another exhibit binder for use by the witnesses. In the event of duplicate exhibits, the most legible version will be used, unless otherwise ordered. The parties shall not serve exhibits on OAH prior to the hearing.

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 may not be admitted into evidence at the hearing unless it is supported by a declaration under penalty of perjury, and the ALJ rules that it is admissible

6. Witnesses: Neither party shall be permitted to call any witnesses not disclosed under Education Code section 56505, subdivision (e)(7), except for good cause shown, supported by declaration under penalty of perjury, and at the discretion of the ALJ.

[3] Education Code section 56505, subdivision (e)(7). The law also provides that the ALJ has discretion to exclude testimony of witnesses or admission of documents that were not disclosed by the parties. (Ed. Code sections 56505, subd. (e)(8), and 56505.1, subd. (f).)

Prior to the due process hearing, the parties shall meet and confer informally to discuss their witnesses and arrange a witness schedule. At the commencement of the hearing, the ALJ and the parties will discuss the witness schedules, including the length of time anticipated for examination of each witness and any scheduling issues for individual witnesses. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for any witness's testimony. 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. The parties shall proceed efficiently in their questioning of witnesses and shall narrow their witness lists and their questions to witnesses to avoid unnecessary, cumulative, or duplicative testimony. The parties should bear in mind that evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear.

All objections as to the relevance of the witnesses' testimony are reserved for hearing.

7. 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).) During the PHC, District indicated that due to impending childbirth, one witness may need to appear by telephone. Student did not object. The parties were advised to make a motion for telephonic testimony at the hearing, should the issue arise.

8. Order of Presentation of Evidence: District shall produce its evidence first. Where Student and District intend to call the same witness to testify, the second party questioning the witness may as questions that s/he would have asked on direct examination so the witness will only need to be called to the witness stand once. 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.

9. Closed Hearing: At the request of Student, the hearing shall be closed.

10. Motions: 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 this PHC.

11. Special Needs and Accommodations: The hearing room shall be large enough to accommodate an electric wheelchair and be located on the ground floor or accessible by elevator.

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

13. Settlement: The parties are encouraged to negotiate to reach a settlement 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 during business hours 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. OAH will check for messages the evening prior to the hearing and the morning of the hearing. If the settlement agreement has been executed but is subject to approval of the school board, the parties may file a motion for OAH to vacate the prehearing conference and hearing dates and set a telephonic status conference for a date following board approval.

IF A FULL AND FINAL SETTLEMENT HAS NOT BEEN CONFIRMED IN WRITING AND BY PHONE WITH OAH BY 4:00 P.M. ON TUESDAY, MAY 21, 2013, ALL PARTIES WILL APPEAR AT HEARING.

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

IT IS SO ORDERED.

Dated: May 09, 2013

/s/
MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings