BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: TORRANCE UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013030530 ORDER FOLLOWING PRE-HEARING CONFERENCE

On June 10, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) June R. Lehrman, Office of Administrative Hearings (OAH). Geoffrey Winterowd, Attorney at Law, appeared on behalf of District. Student's Father (Father), Ricardo Rodriguez appeared on behalf of Student. 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 June 18-20, 2013, at the District's offices located at 2335 Plaza Del Amo, Torrance, CA 90509. The hearing shall begin at 9:30 a.m. on all days, 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. Issue and Proposed Resolutions. The issue at the due process hearing is listed below.

a. May the District conduct a triennial assessment of Student, or else Parent forsake the right to the District's provision of special education to Student?

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 shall serve 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.

Unless District timely amends its witness list in compliance with Education Code section 56505, subdivision (e)(7), District's witnesses will be those listed on District's PHC Statement.

Unless Student timely amends its witness list in compliance with Education Code section 56505, subdivision (e)(7), Student's witnesses will be: Father, Tami Wall (Mother); School Psychologist Ayana Padres; and Home Hospital Teacher Mrs. Hamm.

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. None needed.

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.

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 fully questioned whenever first called to the stand.

9. Motions.

Student's Motion to Dismiss, filed on June 5, 2013, is denied. The Motion is based on an Interim Agreement (IA) dated April 17, 2013, which states that "District agrees to

waive any and all claims…regarding timely signature of assessment plan for [Student]." The plain language of the IA does not resolve the entire issue as stated in District's complaint. Specifically, the IA relates solely to the signature on the assessment plan and not to the question of whether District may "conduct a triennial assessment of Student, or else Parent forsake the right to the District's provision of special education to Student?" Thus the IA did not resolve all pending issues, and the Motion is denied.

In its June 7, 2013, Reply to District's Opposition to the Motion, Student further argued that this matter should be dismissed because Student has filed a Complaint before the Department of Justice, Civil Rights/Disability Rights, and Special Education Division, alleging violation of claims under the Americans with Disabilities Act and the Unruh Act, which are outside OAH jurisdiction. However, the pendency of Student's Complaint, in another forum, concerning claims that are outside OAH jurisdiction, does not deprive OAH of its jurisdiction to hear the matters presented here. A party has the right to present a due process complaint before OAH "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) District's complaint falls within OAH jurisdiction, therefore the Motion to Dismiss is denied.

At present no other prehearing motions are pending or contemplated. Any prehearing motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not made prior to or during the 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 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: June 10, 2013

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings