BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
DEL MAR UNION SCHOOL DISTRICT,	OAH CASE NO. 2013120020
v.	ORDER FOLLOWING PREHEARING CONFERENCE
PARENTS ON BEHALF OF STUDENT.	

On March 17, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Susan Ruff, Office of Administrative Hearings (OAH). Ernest Bell, Attorney at Law, appeared on behalf of the Del Mar Union School District (Del Mar). Student's father appeared on behalf of Student (Student).[1] 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 March 25, 2014, and continue 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., unless otherwise ordered.

The hearing shall take place at:

Office of Administrative Hearings
1350 Front Street, Suite 3005
San Diego, California, 92101
(619) 525-4475

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] ALJ Ruff telephoned Student's mother at the time set for the PHC at the telephone number on her pleadings. There was no answer and ALJ Ruff left a voice mail message. After the PHC had concluded, Student's mother requested to speak with ALJ Ruff. That would have been an improper ex parte communication, so the request was denied.

2. Issue. May Del Mar assess Student pursuant to the October 15, 2013 assessment plan, over the objection of Student's parents?

3. Exhibits. Del Mar's exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. Del Mar shall use numbers to identify exhibits. Each Del Mar exhibit shall be internally paginated, either by exhibit or consecutively, for example, by Bates-stamping. Each Del Mar exhibit binder shall contain a detailed table of contents.

Student's parents shall serve Del Mar with copies of their exhibits as required by special education law, but they need not mark exhibits prior to the hearing. Instead, they may bring their documents to the first day of hearing to be marked by the ALJ. Exhibits shall not be filed with OAH prior to the hearing.

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.

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.

7. Motions. No pretrial motions are pending or contemplated by either Del Mar or Student's father.

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 or set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ. There shall be no audio or visual recording or photography of any type in the hearing room without permission from the ALJ.

10. Special Needs and Accommodations. Student's mother has requested a Hebrew language interpreter.

11. Hearing Open to the Public. Student's father has requested that the hearing be open to the public.

12. 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.

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

IT IS SO ORDERED.

DATE: March 19, 2014

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings