BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: NEWPORT-MESA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2016090101 ORDER FOLLOWING PREHEARING CONFERENCE; ORDER GRANTING CONTINUANCE

On November 4, 2016, a telephonic prehearing conference was held before Administrative Law Judge Judith L. Pasewark, Office of Administrative Hearings. S. Daniel Harbottle, Attorney at Law, appeared on behalf of Newport-Mesa Unified School District. Parent appeared on behalf of Student. The PHC was not recorded.

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

1. Hearing Dates, Times, and Location. Based upon District's request to continue the matter, the hearing is continued and shall take place on January 31, and February 1, 2017, and continue day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at the District's offices located at 220 23rd Street, Building D, Costa Mesa, California 92627. The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 a.m. all other days, unless otherwise ordered.

A telephonic Prehearing Conference is set for January 23, 2017 at 3:00 p.m. OAH shall initiate the telephone call.

As ordered in the scheduling order, the named local educational agency was to provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities. The named local educational agency failed to certify that it would provide a facility for this case that complied with the law. The local educational agency shall inform OAH within two days of the date of this order it is able to certify that it will provide a facility that complies with the law.

Prior to the beginning of the hearing, District shall assist the ALJ to ensure that the hearing room is configured into a courtroom setting, including (1) a table for Student and his representatives; (2) a table for District's legal representative and special education

representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. District shall also make reasonable effort to ensure that drinking water and tissue are available to all parties, witnesses and the ALJ.

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. The issue at the due process hearing, and the proposed resolutions is:

> Is District's initial assessment and assessment report appropriate? Consequently, Student is not entitled to an independent educational evaluation at public expense.

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. Student need only to provide a list of those Exhibits he intends to introduce which is not part of District's exhibit list.

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. Student need only provide a list of those witnesses he intends to call at hearing which are not on District's witness list.

5. Motions. District requested the due process hearing be continued. District's counsel has been ordered back to additional hearing dates on OAH Case No. 2016051030 (primary matter). Parent does not object to the 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. (34 C.F.R. § 300.515(a) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) Counsel's participation in an ongoing due process hearing constitutes good cause, and the matter is continued to the hearing dates agreed upon by the parties.

6. 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.

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.

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

IT IS SO ORDERED.

DATE: November 4, 2016

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Judith Pasewark
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JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings