BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BELLFLOWER UNIFIED SCHOOL DISTRICT	OAH CASE NO. 2015020485 ORDER FOLLOWING PRE-HEARING CONFERENCE

On April 17, 2015, a telephonic prehearing conference was held before Administrative Law Judge Caroline A. Zuk, Office of Administrative Hearings. Patricia R. Valenzuela, Attorney at Law, appeared on behalf of Student. Eric Bathen, Attorney at Law, appeared on behalf of District. The prehearing conference 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 April 22 at 9:30 a.m., April 23 at 9:00 a.m., April 27 at 1:30 p.m., and April 28, 2015 at 9:00 a.m., unless otherwise ordered. During the prehearing conference, the parties believed that they could complete the entire hearing in two days based on the single issue listed below. The hearing shall continue to be calendared for four days in the event additional time is required by the parties, but the ALJ encourages the parties to complete the hearing in two days.

The hearing shall take place at the District's offices located at 16703 South Clark Avenue, Bellflower, California 90706. District shall 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), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.

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. The issue at the due process hearing is listed below.

Did District commit a procedural violation by imposing conditions relating to the parent's request for an independent educational evaluation, which impeded the parent's opportunity to participate in the IEP process and/or caused the deprivation of educational benefits 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 or all of a party's exhibits shall be Bates-stamped. Each exhibit binder shall contain a detailed table of contents. 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.

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 stipulated to meet and confer on April 20, 2015, to attempt to reach agreement on the scheduling of witnesses. The District shall have witnesses available in case agreement on a witness list is not reached. 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. Neither party anticipated the need for telephonic testimony.

7. Motions.

a. Student requested that District's representative at hearing be an individual who would not be called to testify at the hearing. District opposed the request, contending that it had the right to select its representative(s) regardless of whether the representative would be called to testify as a witness.

Student's request is denied, because District has the right to select its representative(s). (34 C.F.R. § 300.512(a)(1) (2008).) However, if Student intends to call a District representative as a witness at hearing, then Student shall call that individual as his first witness to eliminate any concern about the testimony being influenced by other witnesses. The ALJ shall also admonish each witness following his or her testimony not to discuss the witness's testimony with any other witness.

b. Student also requested to digitally record the due process hearing. District opposed Student's request.

The ALJ has discretion to allow a party to audio record the hearing. Student's request is granted on the condition that Student's attorney use the recording only to assist with the presentation of his case and closing brief. However, the only official audio recording of the hearing shall be that prepared by OAH. Student shall destroy his audio recording one day following the submission of his closing brief. The ALJ has the discretion to disallow Student's audio recording at any time if it disrupts the hearing.

No other pretrial motions are pending or contemplated. 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 prehearing conference of April 17, 2015.

8. ALJ's Disclosure regarding Student's Proposed Witness. Student identified Dr. Robin Morris, independent psychoeducational evaluator, as a potential witness for Student. During the prehearing conference, the ALJ disclosed that in private practice she was familiar with Dr. Morris on a professional level, because the ALJ had met with Dr. Morris to discuss her qualifications and experience as an independent educational evaluator. The ALJ informed the parties that she did not believe that her prior professional familiarity with Dr. Morris would affect her ability to be fair and impartial, and that she had no vested interest in the outcome of the matter.

The ALJ provided an opportunity for the parties to comment on this disclosure. District's attorney asked several follow-up questions regarding the ALJ's contacts with

Dr. Morris. Following a discussion about the ALJ's disclosure, the parties agreed that the currently assigned ALJ could be fair and impartial, and did not request that another ALJ be assigned to the case.

9. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

10. 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.

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

A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk at (916) 263-0880, or the OAH ADA Coordinator at OAHADA@dgs.ca.gov or (916) 263-0880 as soon as the need is made known. Additional information concerning requests for reasonable accommodation is available on OAH's website at http://www.dgs.ca.gov/oah/Home/Accommodations.aspx.

12. Hearing Closed To the Public. At the request of the parent, the hearing will be closed to the public.

13. 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.

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.

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

IT IS SO ORDERED.

DATE: April 20, 2015

/S/

CAROLINE A. ZUK
Administrative Law Judge
Office of Administrative Hearings