BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PANAMA-BUENA VISTA UNION SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013060838 ORDER FOLLOWING PRE-HEARING CONFERENCE

On July 19, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Margaret M. Broussard, Office of Administrative Hearings (OAH). Attorney Stacy Inman appeared on behalf the Panama-Buena Vista Union School District (District). Ms. Rita Pierucci, the District director of special education was present on the call. Lorie Stewart appeared on behalf of Student and Parent was present on the call. The PHC was recorded.

Based on discussion with the parties, the following order is issued:

1. Hearing Dates, Times, and Location: The hearing shall take place on **July 23, 24 and 25, 2013,** and continue day to day, Monday through Thursday, as needed, unless otherwise ordered. The hearing shall begin at **9:30 a.m.** on July 23, 2013, and at 9:00 a.m. on all other days, unless otherwise ordered. The hearing shall be held at **3100 Actis Street, Bakersfield, CA 93309.** Following the PHC, the matter was reassigned to ALJ Charles Marson, and the parties were notified.

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

3. Issues: The issues for hearing are limited to those alleged in the District's complaint.[1] The issues were discussed during the PHC, and are reframed and clarified below.

[1] 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).)

I. Is the January-February 2013 psycho-educational assessment of the Student which was conducted by the District appropriate such that Student is not entitled to an independent educational evaluation (IEE)?[2]

II. Is the March 5, 2013, speech and language assessment of the Student which was conducted by the District appropriate such that Student is not entitled to an IEE?

4. Proposed Resolutions: The District has identified the following proposed resolutions:

I. The District's psycho-educational assessment was appropriate and Student is not entitled to an IEE.

II. The District's speech and language assessment was appropriate and Student is not entitled to an IEE.

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. 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.

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[2] As used in this Order, "appropriate" is defined as complying with all applicable statutes and regulations pertaining to assessments.

[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).)

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 may 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. The District may call Shelly Jensen as a witness, who was listed in Student's PHC statement.

The parties shall meet and confer to discuss their witnesses and arrange a witness schedule. Parent shall be allowed to testify on July 23, 2013. 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' 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, Student requested that Shawn Manzell be allowed to testify by telephone. The request was granted. Ms. Manzell must have a copy of both Student's and the District's evidence binders at the time of her testimony and she must be on a "land line" not a cell phone for her testimony. Student's request to have Laura DeLessio testify by telephone was denied without prejudice.

8. Order of Presentation of Evidence: The District shall produce its evidence first. Where the District and Student intend to call the same witness to testify, each party will examine the witness immediately after the other party, 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 to the members of the public. If Student would like to change to an open hearing, Student will notify the ALJ prior to the commencement of the hearing.

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 will end each day by 5:00 p.m. to accommodate the request of District's counsel.

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 or set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ.

13. 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. Any party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

14. 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 a letter of withdrawal from the District, 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 9:00 A.M. ON MONDAY, July 22, 2013, ALL PARTIES WILL APPEAR AT HEARING.

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

IT IS SO ORDERED.

Dated: July 19, 2013

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings