BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: REDLANDS UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT,	
PARENT ON BEHALF OF STUDENT, v. REDLANDS UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013020510 OAH CASE NO. 2012110422 ORDER FOLLOWING PRE-HEARING CONFERENCE

On April 8, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Marian H. Tully, Office of Administrative Hearings (OAH). Margaret J. McNair, Attorney at Law, appeared on behalf of Student. Tracy L. Tibbals, Attorney at Law, appeared on behalf of District. 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 April 15, through 18, 2013, at the District's offices located at 20 West Lugonia, Redlands, California, 92373. The hearing shall begin at 10:00 a.m. the first day of the hearing and at 9:00 a.m. all other days and end at 5:00 p.m., 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. Issues and Proposed Resolutions. The issues to be presented by Student and District at the due process hearing in the consolidated matter are:

a) Did District deny Student a free appropriate public education (FAPE) from November 2010 to the present, by failing to assess Student in all suspected areas of disability, specifically by failing to conduct a comprehensive neuropsychological assessment, an FBA and/or an FAA; and

b) Did District deny Student a FAPE in the June 4, 2012 IEP by failing to offer an appropriate behavior support plan.[1]

Student seeks independent educational evaluations in all areas of suspected disability, particularly a neuropsychological assessment and/or an FAA at public expense, placement in a non-public school with appropriate supports, and compensatory education. District seeks an order finding District's assessments and BSP were appropriate.

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. District agrees to provide documents requested by Student by the close of business on April 10, 2013. The parties shall serve their evidence binders on each other by the close of business on April 11, 2013. 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 following witnesses will be called to testify by both parties: Cozette Holmes, Gina Maddox, Peter Lock, Angela Neuhaus, and Patrick Smith. District has agreed to produce these witnesses in Student's case.

[1] Student's third issue as to District's manifestation determination was withdrawn.

The following witnesses will be called to testify by Student: Greg Johnson, Student's mother, and Student's school counselor. District will attempt to identify and make the school counselor available and provide his/her records requested by Student.

The following witnesses will be called to testify by District: Dr. Conor Kelly, Kimberly Clark, Keith Drieburg, Kelle Baker, Aurora Guevara, and Kevin Hu.

The witness schedule will be finalized at the commencement of the due process hearing. 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.

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. If a witness is to be called by more than one party, the party first conducting cross-examination of that witness shall include in that examination all questions intended for the witness on direct examination, in order that each witness need only appear and testify once.

6. Telephonic Testimony. At present neither party anticipates the need for 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. 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. The parties have timely disclosed witnesses and exhibits.

8. Order of Presentation of Evidence. This matter is consolidated. Student shall proceed first, followed by District.

9. Motions. No 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 8, 2013.

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/Closed To the Public. At the request of the parent, the hearing will be open to the public. There will be no audio or visual recording of any kind and no photography permitted.

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: April 08, 2013

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings