BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: TORRANCE UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2014030188 ORDER FOLLOWING PRE-HEARING CONFERENCE, DENYING STUDENT MOTION TO DISMISS AND DISTRICT REQUEST FOR CONTINUANCE, AND GRANTING DISTRICT MOTION TO EXCLUDE WITNESSES AND DOCUMENTS NOT TIMELY DISCLOSED BY STUDENT

On March 21, 2014, a prehearing conference (PHC) was held telephonically before Administrative Law Judge (ALJ) Robert G. Martin, Office of Administrative Hearings (OAH). Geoffrey Winterowd, Esq. appeared on behalf of petitioner Torrance Unified School District (District). Student's Parents appeared on behalf of Student. The PHC was recorded.

District filed a prehearing conference statement and served District's witness list copies of District's exhibits on Student before close of business on March 20, 2014, five business days before the March 27, 2014 hearing date for the matter. Student did not file a prehearing conference statement and did not serve a witness list or copies of Student's exhibits on District before the close of business on March 20, 2014.

Based on discussion of the parties, the ALJ issues the following order:

1. Hearing Dates, Times, and Location. The hearing is to take place on March 27, 2014, at the offices of Torrance Unified School District, 2335 Plaza del Amo, Torrance, CA 90509. 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. The issue to be resolved at the due process hearing, as alleged in the complaint and clarified by the parties and the ALJ at the PHC, is:

Is the District entitled to assess Student pursuant to its January 6, 2014 assessment plan for Student, without Parents' consent?

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. District shall mark its exhibits using numbers D1, D2, D3, etc. (or a similar prefix). Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be sequentially Bates-stamped. Each exhibit binder shall contain a detailed table of contents. At the hearing, in addition to its own copy of its exhibits and the copy exchanged with Students, District shall supply an exhibit binder containing its exhibits for use by the ALJ, and an exhibit binder for use by witnesses. The parties may not serve exhibits on OAH prior to the hearing.

4. Witnesses. District is responsible for procuring the attendance at hearing of its witnesses. The parties will schedule the 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.

5. Timely Disclosure of Witnesses and Exhibits. Education Code section 56505, subdivision (e)(7), requires each party to disclose, at least five business days prior to the hearing, a list of all witnesses and their general area of testimony that the parties intend to present at the hearing, and a copy of all documents, including all assessments completed by that date and recommendations based on the assessments, that the parties intend to use at the hearing. The District's motion based on Student's failure to make these disclosures is discussed below.

Each party reserves the right to present additional witness and documents for purposes of rebuttal.

6. Telephonic Testimony. None expected.

7. Meet and Confer Regarding Witnesses and Possible Stipulations. The parties are ordered to meet and confer by telephone on Tuesday, March 25, at 1:00 p.m. The District is to call Parents at a telephone number provided by Parents at the PHC. The parties shall discuss the schedule of witnesses and possible stipulations that might reduce or eliminate the need to present certain witnesses or documents. The parties shall coordinate the availability and order of testimony of witnesses to ensure that there is a witness available to testify at all times during the hearing, and to ensure that the hearing is completed as scheduled. The parties shall discuss a time estimate of the length of each witness's direct examination testimony, and identify those witnesses the party intends to call, as opposed to witnesses the party may call, depending on the flow of the hearing and the evidence.

Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for the direct and cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. 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. The ALJ has discretion to limit the number of witnesses who testify and

the time allowed for witnesses' testimony. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

8. Scope of Witness Examination. After the first direct examination and cross-examination, each party shall be limited in examining the witness to only those matters raised in the immediately preceding examination.

9. Motions.

Student's Motion to Dismiss District's Due Process Hearing Request

District filed its request for due process hearing (complaint) on March 3, 2014. On March 19, 2014, Student filed a motion to dismiss District's complaint on grounds that District failed to convene a resolution meeting with Parents and the relevant member or members of Student's individualized education program team having specific knowledge of the facts identified in the complaint. Student's motion to dismiss was heard at the start of the PHC.

Under the Individuals With Disabilities Education Act (IDEA), the Code of Federal Regulations, and the Education Code, within 15 days of receiving notice of a complaint filed by a parent, the school district or other local educational agency receiving the complaint is required to convene a resolution meeting with Parents and the relevant member or members of Student's individualized education program team having specific knowledge of the facts identified in the complaint. (20 U.S.C. § 1415(f)(B)(i)(I); 34 C.F.R. § 300.510; Ed. Code, § 56501.5, subd. (a)(1).) The purpose of the resolution meeting is for the parents to discuss the due process hearing issue, and the facts that form the basis of the due process hearing request, so that the local education agency has the opportunity to resolve the dispute that is the basis for the complaint. (Ed. Code, § 56501.5, subd.(a)(4).) However, there is no corresponding requirement that a resolution meeting be held to discuss a due process hearing request that has been filed by a local educational agency against a student. Therefore, the District's failure to convene a resolution session is not grounds for dismissal of the District's complaint, and Student's motion to dismiss is denied.

District's Motion to Continue the Hearing Date

At the prehearing conference, District orally requested a continuance of the hearing date on grounds that the scheduled March 27, 2014 hearing date in this matter conflicts with a previously-scheduled due process hearing in OAH Case Number 2013090293 that counsel for District must attend. Parents opposed any continuance of the March 27, 2014 hearing date. District had previously requested a continuance on the same grounds in a request for continuance that was previously filed and denied on March 20, 2014.

OAH will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The

party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.) Here, however, the District has alleged no new facts, circumstances or law in support of the request for reconsideration. District's request to continue the hearing date is therefore denied.

District's Motion to Prohibit the Introduction of Witnesses and Documents Not Disclosed by Student

At the prehearing conference, District orally moved to prohibit the introduction at hearing of witnesses and documents not disclosed by Student on or before March 20, 2014, the date five business days before the March 27, 2014 hearing date. District specifically reserved the right to not call Parents during District's presentation of its case and instead seek to prohibit their testimony. Education Code section 56505, subdivisions (e)(7) and (8), provide that parties have the right to receive from other parties to the hearing, at least five business days before the hearing, a copy of all documents and a list of all witnesses that the party intends to present at the hearing, and the right to prohibit the introduction of any evidence not so disclosed.

Parents were advised of the District's right to prohibit Student from presenting witnesses and documents at the hearing if the existing March 27, 2014 hearing date was not moved to a later date. Parents stated that they wished to retain the March 7, 2014 hearing date and present Student's case based on the District's documents and Student's cross-examination of witnesses presented by the District. District's motion is therefore granted. The question of whether Student should be allowed to present any rebuttal witnesses in response to evidence presented by the District will be decided by the ALJ at hearing, if the issue arises.

The parties do not anticipate bringing any further motions. In the event that any motion other than a challenge to a newly-assigned ALJ for the hearing is brought after this date, it 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 PHC.

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. Compensatory Education/Reimbursement. None sought in this matter.

12. Special Needs and Accommodations. None.

13. Hearing Closed To the Public. The hearing will be closed to the public.

14. Settlement. The parties are encouraged to continue working together to complete 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 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 AND SHALL 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. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

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

IT IS SO ORDERED.

Dated: March 24, 2014

/s/

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings