BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: FALLBROOK UNION ELEMENTARY SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013060104 ORDER FOLLOWING PREHEARING CONFERENCE

On June 26, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Robert Helfand, Office of Administrative Hearings (OAH). Susan B. Winkleman, Attorney at Law, appeared on behalf of the Fallbrook Union Elementary School District (District). No one appeared on behalf of Parent on behalf of Student (Student).[1] The District filed its PHC Statement on June 21, 2013. Student has not filed a PHC Statement. The PHC was not recorded.

Based on discussion with the District, the ALJ issues the following order:

1. Hearing Dates, Times, and Location. The hearing shall take place at 9:30 a.m. on July 2, 2013, at the offices of the District located at 321 N. Iowa Street, Fallbrook, California 92028. The hearing will continue day to day, Monday through Thursday, as needed at the discretion of 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.

The District shall ensure that an appropriate room is available for the hearing, with separate counsel tables facing the ALJ's table and a separate table for the witness. The District shall also ensure that some type of water is available for all hearing participants, including the witnesses.

[1] The ALJ attempted to contact Student's mother by telephone four times. The number on file with OAH was disconnected. Two of the phone numbers were provided by District's attorney. One was disconnected and the other went to voice mail which was filled.

2. Issue. The sole issue to be decided at the due process hearing is:

Whether the District is entitled to assess Student pursuant to its April 11, 2013 assessment plan?

The District's proposed resolution is that OAH issue an order finding that the District is entitled to assess Student as outlined in the April 11, 2013 assessment plan without parental consent.

3. Exhibits. Student has not filed a PHC Statement or Exhibit List. Thus, Student will be limited to introducing into evidence only those documents which appear on the District's Exhibit List. Student will be able to utilize additional exhibits in rebuttal to the District's case which do not appear on the District Exhibit List.

Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The District shall use numbers to identify its exhibits. Student shall use letters to identify any of any his exhibits. 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 represent that they have served 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.

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. Student failed to file a PHC Statement or Witness List. Student will be limited to calling witnesses who appear on the District Witness List with the exception of Student's parents. Student will be permitted to call a witness not listed above for rebuttal to the District's case only.

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 ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

The District has designated the following as potential witnesses: Page McKennett, Pamela Cline, Kathryn McKinney, Danyelle Dale, Leonard Rodriguez, Brad Fox, Paula Mackay, Mr. Deluca, Lucy McDonald, Carol Hilke, Raymond Leonard, Student's parent, and Student.

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 has requested 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. 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 June 26, 2013.

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

9. Conduct of Parties and 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.

10. Special Needs and Accommodations. At present, the District does not anticipate the need for special accommodation for any witness or party, or for translation services.

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

12. 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 SIMULATANEOUSLY 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.

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

IT IS SO ORDERED.

Dated: June 26, 2013

/s/
ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings