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. 2016100887 ORDER FOLLOWING PREHEARING CONFERENCE

On May 8, 2017, a telephonic prehearing conference was held before Administrative Law Judge Kara Hatfield, Office of Administrative Hearings. Pamela Daves, Attorney at Law, appeared on behalf of Student. Eric Bathen, Attorney at Law, appeared on behalf of Bellflower Unified School District. The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

1. Hearing Dates, Times, and Location. The hearing shall take place on May 16, 17, and 18, 2017, and continuing day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at the District's offices located at 16703 South Clark Avenue, Bellflower, California 90706. The hearing shall begin at 9:30 a.m. the first day of the hearing, and at 9:00 a.m. all other days, unless otherwise ordered. District shall ensure that one parking space is available on each hearing day for each of the following: the ALJ, Parents, Student's attorney, and District's attorney.

As ordered in the scheduling order, 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 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities. District certified that the facilities used for this case comply with the law. District shall inform OAH within two days of the date of this order if it is unable to comply with this order.

Prior to the beginning of the hearing, District shall ensure that the hearing room is configured into a courtroom setting and shall have at a minimum (1) a table for Student and his representatives; (2) a table for District's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. District shall provide drinking water and tissue to all parties, witnesses and the ALJ. The same hearing room shall be used for each day of hearing and shall be available at least one hour prior to the commencement of the hearing each day. The hearing room shall be

locked following the hearing each night. District shall ensure that the hearing room and access to it are in compliance with the Americans with Disabilities Act.

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 at the due process hearing, and the proposed resolutions, are listed below.

Did District deny Student a free appropriate public education by:

1) failing between October 13, 2014, and December 1, 2016, to assess Student in all areas of suspected disability,[1] specifically:

    a) psychoeducation including social-emotional functioning; and

    b) language and speech;

2) failing since January 21, 2015,[2] including in the individualized education programs on January 21, 2015,[3] and January 15, 2016, to:

    a) provide Parent the procedural rights and safeguards in Spanish;

    b) provide Parent the IEPs in Spanish;

    c) develop additional goals, specifically in academics, language and speech, and social-emotional functioning;

[1] During the PHC, Student withdrew any dispute regarding the appropriateness of the January 2014 psychoeducational assessment District conducted in December 2013.

[2] District intends to argue any claim regarding events that occurred before February 14, 2015, are barred by the statute of limitations and that Student's Amended complaint, submitted on February 14, 2017, and deemed filed by OAH on February 17, 2017, did not relate back to the date the original complaint was filed, October 13, 2016. Student intends to argue that the amended complaint relates back to the filing date of the original complaint and that District's failure to provide Parent the procedural rights and safeguards in Spanish constitutes a statutory exception to the statute of limitations.

[3] The IEP prepared on January 21, 2015, has the date of January 23, 2014 on it but the parties agreed the IEP date is January 21, 2015.

d) provide a clear written offer that identified a specific placement by stating how the weekly specialized academic instruction minutes would be allocated between group and individual instruction;

e) offer appropriate placement in a special day class or additional individual specialized academic instruction services; and

f) offer appropriate related services, specifically:

i) school-based counseling; and

ii) language and speech therapy;

3) failing in the June 16, 2016 IEP to:

a) provide Parent a Spanish interpreter during the telephonic IEP team meeting;

b) have a general education teacher participate in the telephonic IEP team meeting;

c) have a special education teacher participate in the telephonic IEP team meeting;

d) provide Parent the IEP in Spanish; and

e) provide a clear written offer that identified a specific placement by:

i) stating which type/program of special day class District was offering; and

ii) stating which four class periods per day Student would be in the special day class;

4) failing to provide Parent prior written notice of District's decision to assess Student in the spring of 2016; and

5) failing to provide Student copies of all educational records upon request?

Student's proposed resolutions are independent educational evaluations in the areas of psychoeducation and language and speech; increased services in his current IEP; compensatory education services through a nonpublic agency; all IEPs provided to Parent in Spanish; all of Student's educational records provided to Parent; and training to District staff regarding parental participation in IEPs, translation of documents, and having appropriate personnel at IEP team meetings.

3. 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. The parties shall serve 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.

Each exhibit shall consist of one document; separate documents may not be combined into one exhibit. To the extent practicable, exhibits in the binders shall be in chronological order.

The parties shall meet and confer **by May 12, 2017,** to delete duplicate exhibits from the exhibit binders.

The parties shall exchange resumes for each witness who is expected to testify as to their professional credentials. Notwithstanding the requirements of Education Code section 56505, subdivision (e)(7), the parties shall exchange resumes and curriculum vitae not later than **May 12, 2017.**

District shall include as part of its exhibits the school calendar(s) for the 2014-2015, 2015-2016, and 2016-2017 school years. Notwithstanding the requirements of Education Code section 56505, subdivision (e)(7), District shall serve a copy of the school calendar(s) on Student **by May 12, 2017,** and include the school calendar(s) in the binders provided for use by the witnesses and the ALJ.

If the parties intend to rely on IEPs, the parties shall attach all pages of the IEP(s), including copies of all actual signatures on the IEP(s) and any typewritten or handwritten notes or comments, if any, written on the IEP(s). Excerpts of an audio record of an IEP team meeting, if any, should, in addition to the audio record offered, be transcribed and offered as documentary evidence; that portion of the audio record transcribed shall be provided to the opposing party along with the transcript to allow an opportunity to verify the accuracy of the transcription. Transcriptions need not be prepared by a certified court reporter.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not timely 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. Education Code section 56505, subdivision (e)(8), affords each party the right to prohibit the introduction of any evidence at the hearing that has not been disclosed at least five business days before the hearing.

4. Witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. 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.

The parties shall comply with Education Code section 56505, subdivision (e)(7). No party shall be permitted to call any witnesses not timely disclosed except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ. Education Code section 56505, subdivision (e)(8), affords each party the right to prohibit the introduction of any evidence at the hearing that has not been disclosed at least five business days before the hearing.

The parties shall meet and confer **by May 12, 2017**, to create the schedule of witnesses and coordinate the availability and order 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 also meet and confer regarding the one joint detailed hour-by-hour schedule.

On the first day of hearing before the first witness testifies, the parties shall provide the ALJ with one joint detailed hour-by-hour schedule of all witnesses expected to testify at hearing, which list shall also include an estimate of time for each party's direct and cross-examination. Counsel shall meet and confer each day of hearing to revise the witness schedule as needed.

The parties are ordered to meet and confer by **May 12, 2017,** to identify witnesses on their respective witness lists who cannot be produced at hearing without a subpoena and provide the witnesses' contact information to opposing counsel so that subpoenas can be issued. As part of the meet and confer process, District's counsel shall inform Student's counsel whether the witnesses on Student's witness list are employed by or otherwise under the control of District, and if not, shall provide Student's counsel with the witness(es)' most recent contact information. Any contact information provided by District shall be used by Student's counsel for the limited purpose of issuing subpoenas or for contacting the witness(es) for purposes of attending the hearing and shall not be disseminated to any other person(s).

Each witness will only be called once to testify, except for rebuttal purposes, and all parties shall examine the witness when the witness is first called. 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 each witness is expected to take.

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 such evidence. The ALJ has

discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony. Education Code, section 56505.1, subdivision (h), empowers the ALJ presiding at a due process hearing to set a reasonable limit on the length of the hearing after consideration of all of the following: (i) issues to be heard, (ii) complexity of facts to be proven, (iii) ability of the parties or their representatives to present their respective cases, and (iv) estimates of the parties as to the time needed to present their respective cases.

5. Scope of Witness Examination. Each witness shall be called to testify only once, except for rebuttal purposes, and all parties shall examine the witness on all issues when the witness is first called. 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 permitted by the ALJ. The order in which the parties present their cases in chief shall be subordinate to the need for each witness to appear only once.

6. Telephonic Testimony. Neither party 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. Prior to the hearing, the proponent of the witness shall provide the proposed witness with a complete set of duplicate physical copies of the exhibit binders from all parties, containing all of each party's exhibits and shall instruct the witness not to remove any documents from the exhibit binders. Faxed or electronic copies are unacceptable. The hearing room shall have sound equipment that allows everyone in the room to hear the witness, and the witness to hear objections and rulings. Unless otherwise ordered, the witness shall testify on a land-line telephone while alone in a private room. No witness will be heard by telephone unless all these requirements have been fulfilled.

7. Electronic Recording of Hearing.

a. Audio Recording. The ALJ shall record the hearing and the ALJ's recording is the only official record of the hearing. No person shall record or photograph the proceedings unless otherwise permitted by the ALJ.

b. Video Recording. No party, witness or anyone else present may make any video recording of any part of the proceedings. Any person doing so shall be subject to sanctions.

8. Order of Presentation of Evidence. In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) Here, Student is the petitioning party. Accordingly, Student shall present his case-in-chief, 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 May 8, 2017.

10. 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.

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

The parties shall meet and confer **by May 12, 2017**, to determine legal and factual stipulations, if any, to be submitted at hearing.

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 shut off during the hearing unless permission to the contrary is obtained from the ALJ. There shall be no texting permitted while the hearing is in session.

13. Special Needs and Accommodations. OAH will provide Parent a Spanish language interpreter during the due process hearing. At present neither party anticipates the need for special accommodation for any witness or party.

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

14. Hearing will be Closed to the Public. The hearing will be closed to the public unless Student requests it be open.

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 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.

If the parties settle the matter subject to board approval, in addition to a signed copy of the signature page of the settlement agreement as noted above, the parties shall submit a request for a status conference and provide the date of the next board meeting. OAH will not cancel the hearing dates without this information.

16. Failure to Comply. The failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: May 9, 2017

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Kara Hatfield
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KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings