BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013040589
v.	ORDER FOLLOWING PREHEARING CONFERENCE AND SETTING DUE PROCESS HEARING DATES
SAN LORENZO UNIFIED SCHOOL DISTRICT.	

On June 17, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Adeniyi A. Ayoade, Office of Administrative Hearings (OAH). Student's grandmother and holder of educational rights (Parent) appeared on behalf of Student. Shawn Olson Brown and Alejandra Leon, Attorneys at Law, appeared on behalf of the San Lorenzo Unified School District (District). The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on **June 25-26, 2013,** continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ, at the District's offices located at **15510 Usher Street, San Lorenzo, CA 94580-1623.** The hearing shall begin at 9:00 a.m. and end at 5:00 p.m. each day, with the exception of the first day when the hearing shall begin at 9:30 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.

The District shall ensure that there is an appropriate room available for the due process hearing. The room shall meets OAH specifications, and at a minimum, the room shall have separate tables capable of being moved into a courtroom configuration, as follows: (1) one table for Student's representatives; (2) one table for District's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table. A room with one large conference table is not suitable. If a suitable room is not available for any of the hearing days, the District shall immediately notify OAH and the parties and propose a different location. At all times during the hearing, District shall endeavor to have fresh water

available to the parties and witnesses. **In addition, as requested by Student, District agrees to have a DVD player and a projector available for use during the hearing.**

2. Issues and Proposed Resolutions. The sole issue in this matter is as alleged in Student's amended complaint dated April 16, 2013, and as deemed filed by OAH on April 23, 2013. The issue was discussed by the parties with the ALJ at the PHC and clarified as follows:[1]

a) **ISSUE:**

1) Whether Student requires placement in a general education science class or a general education social studies class to receive a free appropriate public education in the least restrictive environment?

b) **PROPOSED REMEDIES**. As proposed resolutions, Student requests he should be given the opportunity to enroll in either or both the general education science and social studies classes.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties may use numbers or alphabets to identify exhibits. If numbers are used by both parties, each party shall place the letter "S" or "D" in front of the exhibit to designate if it is a Student or District exhibit (for example, 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. 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. **Exhibit binders shall be exchanged five business days prior to the hearing in accordance with Education Code section 56505, subdivision (e)(7), unless the parties agree to a later date.**

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 good cause is shown as to why it was not previously exchanged. The parties shall be prepared to make such an offer of proof. The ALJ shall determine whether an exhibit is to be admitted into evidence. Only exhibits relevant to the issues previously stated in this order shall be admitted, unless used for impeachment purposes. The fact that an exhibit is placed in an exhibit binder does not guarantee its admission.

[1] Except for such clarification or restatement of the issue as provided herein below, no amendment to the due process complaint is allowed by this order. Any amendment to a Due Process Complaint shall comply with California Education Code section 56502, subdivision (e). The filing of an amended complaint will restart the applicable timelines for a due process hearing. (20 U.S.C. § 1415(c)(2)(E)(ii).)

4. Witnesses. As of the day of the PHC, District has identified and disclosed 10 witnesses it intends to call at the hearing. **Student has not disclosed any witnesses**. At the PHC, the ALJ reminded the parties of the requirements of Education Code section 56505, subdivision (e)(7), and advised the parties to furnish a copy of all documents and a list of all witnesses the parties intend to present at the hearing on or before 5:00 P.M. on June 18, 2013, in compliance with the law. Further, the ALJ explained to Student's Parent the importance of calling witnesses and the role of such witnesses in a typical due process hearing (for example, authenticating documents and testifying about the issue(s) in dispute). Student's Parent indicated that she does not intend to call any witness.

Otherwise, 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, and at the discretion of the ALJ. At the commencement of the hearing, each party shall provide the ALJ with a schedule of witnesses and a time estimate for each witness's direct and cross-examinations. Parties shall be prepared to make an offer of proof, if asked, as to why a specific witness' testimony is necessary.

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. In the case of witnesses who have professional licenses and credentials, it is strongly recommended (but not ordered) that the party calling such witnesses be prepared to present copies of their *curriculum vita* (CV) or resume as exhibits, and exchange them with the other party.

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. 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. 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. No request for telephonic testimony was made by either party.

7. Motions. Other than as discussed or included herein, no pretrial motions are pending. 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 17, 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 if possible.

9. 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.

10. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for interpreter services.

11. Hearing Closed To the Public. At the request of the Student, the hearing shall be closed to the public.

12. Settlement. The parties are encouraged to continue working together to reach an agreement before the due process hearing. If the parties believe a mediator may assist them in settlement negotiations, they should submit a request for mediation as soon as possible. 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. ON MARCH 16, 2012, 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 and 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 18, 2013

/s/
ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings