BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: LUCIA MAR UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013010704 ORDER FOLLOWING PREHEARING CONFERENCE

On March 11, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Theresa Ravandi, Office of Administrative Hearings (OAH). Peter Sansom, Attorney at Law, appeared on behalf of the Lucia Mar Unified School District (District). Andrea Marcus, Attorney at Law, appeared on behalf of Parent and Student (Student). The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing dates are confirmed. The hearing shall take place on March 19 through 20, 2013, at the District's offices located at 227 Bridge Street, Arroyo Grande, California 93429.[1] The hearing shall begin each day at 9:00 a.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.

[1] The district shall ensure that the hearing room is capable of being configured into a courtroom setting and shall have at a minimum: 1) a table for Parent and Student's attorney; 2) a table for the District and District's attorney; 3) a table for the witness; and 4) a table for the ALJ, near an electrical outlet. The District shall provide drinking water to all parties, witnesses and the ALJ.

2. Issues and Proposed Resolutions. The issues for hearing are limited to those alleged in the District's request for due process (complaint).[2] The issues were discussed during the PHC and the District further refined issue number one as listed below.

Issue One: Does the District have the right to select qualified personnel of its choice to assess Student pursuant to the assessment plan dated December 14, 2012?[3]

Issue Two: If Student wishes to receive special education services at public expense, must he reasonably, with the assistance of Parent, make himself available for reassessment by the District pursuant to the assessment plan dated December 14, 2012?

Proposed Resolutions: The District is seeking an order that it may assess Student, pursuant to its December 2012 assessment plan, with personnel of its own choice, and that Parent must reasonably make Student available for assessment if Student wishes to receive special education services.

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. Student represents that he has received the District's evidence binder and will timely serve his binder on the District in compliance with Education Code section 56505, subdivision (e)(7), by the morning of March 12, 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.

Student disclosed an additional exhibit consisting of communications between the attorneys for the parties regarding assessments. The District raised a concern about Student listing as exhibits, declarations of witnesses scheduled to testify as witnesses. The fact that a document is listed as an exhibit does not guarantee its admission into the record. The ALJ will determine which exhibits are admissible at hearing.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not included in the exhibit lists or disclose during the PHC, 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.

---

[2] The issues in a due process hearing are limited to those identified in the written due process complaint. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (1).)

[3] Student acknowledged that he is not contesting the District's right to conduct an assessment but rather the personnel to serve as the assessors.

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 a written declaration under penalty of perjury, and at the discretion of the ALJ.

Prior to the due process hearing, the parties shall informally meet and confer to formulate their witness schedule. At the commencement of the hearing, the parties will present the witness schedules. Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for the full examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

At the present time, the District intends to call all witnesses listed in its PHC statement. Student intends to call all witnesses listed in his PHC statement as well as Dr. Randall Ball and Jacqueline Williams (District witnesses). 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.

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. Neither party requested telephonic testimony for any witness.

7. Order of Presentation of Evidence. The order of presentation of evidence shall be as follows: the District shall present its case first, followed by Student. If a witness if to be called by more than one party, each party shall ask their questions of the witness, direct and cross examination, so that the witness does not need to return for testimony.

8. Motions. On March 6, 2013, the District filed a Motion for Judicial Notice of the Decision in the consolidated matter of OAH Case Nos. 2011120452 and 2012030796.

During the PHC, Student verbally opposed this motion. Student has appealed the administrative decision. The District's request for judicial notice is denied without prejudice.

The District anticipates filing a motion by March 12, 2013 to limit evidence based on collateral estoppel. The District's motion will address its contention that Student is collaterally estopped from arguing that Student will be traumatized from being assessed by District assessors based upon the Decision in OAH Case Nos. 202011120452 and 2012030796. Student will have three business days to file a written response and the ALJ will either rule by written order or at the start of the hearing. Any further motions 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 March 11, 2013.

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

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. Special Needs and Accommodations. A Spanish language interpreter is required and shall be ordered.

12. Open Hearing. At the request of the Student, the hearing will be open to the public.

13. 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 a letter of withdrawal with a signature page of a 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.

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

IT IS SO ORDERED.

Dated: March 12, 2013

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings