BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
VISTA UNIFIED SCHOOL DISTRICT,	OAH Case No. 2015010878
v.	ORDER FOLLOWING PREHEARING CONFERENCE AND GRANTING REQUEST TO CHANGE LOCATION OF MEDIATION AND DUE PROCESS HEARING
PARENT ON BEHALF OF STUDENT.	

On March 6, 2015, a second telephonic prehearing conference was held before Administrative Law Judge Caroline A. Zuk, Office of Administrative Hearings. Tiffany M. Santos, Attorney at Law, appeared on behalf of Vista Unified School District. Student's parents appeared on behalf of Student. The PHC was recorded. Spanish interpreter Grace Costas participated in the conference call to translate for Student's mother and the ALJ. Student's father stated during the conference that he did not require an interpreter to translate English to Spanish.[1]

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

1. Hearing Dates, Times, and Location. During the first prehearing conference on February 20, 2015, the ALJ set the following mediation and due process hearing dates, which shall remain in effect:

Mediation:	March 11, 2015 at 9:30 a.m. to 4:30 p.m.
Due Process Hearing:	March 17-19, 2015, continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. The hearing shall begin each day at 9:00 am and end at 4:30 p.m. with the exception of March 17, 2015, on which day the hearing shall begin at 9:30 a.m., unless otherwise ordered.
Location:	Office of Administrative Hearings 1350 Front Street, Suite 3005 San Diego, California 92101

[1] Father claimed that the interpreter was not accurately translating English into Spanish, but did not establish that fact.

Prior to the prehearing conference, District filed a request to change the location of the mediation and hearing, which are currently set to be convened at the District's offices at 1234 Arcadia Avenue, Vista, California 92084. District requested that the mediation be held at OAH, San Diego, located at 1350 Front Street, Suite 3005, San Diego, California 92101, and the hearing be held at the Thibodo Community Center, located at 1150 Lupine Hills Drive, Vista, California 92081. The basis of the District's request was that on September 26, 2014 Judge James M. Dorr, Superior Court of California, County of San Diego, in Case Number 37-2014-00029765-CU-PT-NC, issued a Workplace Violence Restraining Order After Hearing effective until September 26, 2017, which ordered Student's father to stay "at least 150 yards away from . . . [a]ll Vista Unified School District school sites and facilities."

Parents did not want the mediation or hearing to be at the District's offices, because they did not think it was a neutral location. Student's mother objected to the Thibodo Community Center, because she stated that the room used for hearing was "filled with attorneys" during a previous due process hearing involving the District, which was contrary to District's recollection. Parents' preferred location for the mediation and hearing was at OAH, San Diego, because of its neutrality. While the distance between Parents' home to OAH, San Diego (approximately 43 miles) is further than the distance between their home and the District's office (5 miles), Parents did not state any objection to the longer distance.

Due process hearings "shall be held at a time and place reasonably convenient to the parent or guardian and the child involved." (Ed. Code, § 56505, subd. (b); 34 C.F.R. 300.515(d).) "Reasonably convenient" does not mean that the hearing may be located anywhere a parent chooses. Due process hearings are generally scheduled in the offices of the school district as the pupil generally resides within the district's coverage area. If the parent requests an alternative location that appears reasonably convenient, the district may show prejudice and the equities may be weighed. Due process hearings must be fair and conducted so that the parties can exercise their rights as provided for by law. (Ed. Code § 56505(c) & (e).)

Considering that both parties agreed to an alternative location, and both proposed OAH, San Diego for the mediation (District and Parents) and/or hearing (Parents only), District's request to change the location of the mediation and hearing is granted. The mediation and hearing shall be convened at OAH, San Diego, 1350 Front Street, Suite 3005, San Diego, California 92101.

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. Issue. The sole issue at the due process hearing is listed below.

Whether District's March 6, 2014 IEP, as amended on March 19, April 18 and October 31, 2014 and January 8, 2015, constitutes a free appropriate public education in the least restrictive environment such that District can implement the March 6, 2014 IEP and its amendments without the parents' written consent?

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. 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.

District timely filed a prehearing conference statement, including a list of proposed exhibits. District intends to serve an amended exhibit list and its exhibits by March 10, 2015. Student did not serve and file a prehearing conference statement, including a list of proposed exhibits. Student's explanation was that his proposed exhibits are in Spanish, and the ALJ at the previous due process hearing did not admit the documents into evidence. Therefore, Student believed that his exhibits would not be admitted at this hearing. The ALJ asked Parents to identify their proposed exhibits during the prehearing conference. Student's father stated that there were "several letters" between the District and Parents but did not provide any further information to describe the proposed exhibits. Student's father further stated that there were some IEP documents in Spanish that Student would like to introduce into evidence. Student's father requested that the ALJ make a ruling during the prehearing conference as to the admissibility of Student's proposed exhibits. The ALJ informed the parties that all rulings regarding the admissibility of documents would be made at the hearing, and ordered the parties to exchange their proposed exhibit lists and exhibits by March 10, 2015.

4. Witnesses. District's prehearing conference statement included a list of proposed witnesses. Student did not serve and file a prehearing conference statement, including a list of proposed witnesses. During the prehearing conference, Student stated that the following witnesses will be called to testify: Student, Student's mother and Student's father.

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.

District is encouraged to review and shorten its witness list 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.

District shall have witnesses available to complete each day of hearing until District concludes its case in chief. 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.

Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for cross-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.

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, 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. During the prehearing conference, Student's father requested that OAH assign a different interpreter, because he did not believe that the interpreter was correctly translating English into Spanish for Student's mother. However, Student's father did not establish that the interpreter was incorrectly translating.

Any prehearing motion filed after this date shall be supported by a declaration under penalty of perjury, providing specific, objective facts to support the motion for review by the ALJ.

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 Counsel, Parties and Hearing Room Decorum. The ALJ informed the parties that improper conduct would not be tolerated at the hearing, and that all attorneys, parties and 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. A Spanish language interpreter is required for Student's mother.

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 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. 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.

DATE: March 9, 2015

/S/

CAROLINE A. ZUK
Administrative Law Judge
Office of Administrative Hearings