BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: GARVEY SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017070426 ORDER DENYING: REQUESTS FOR RECONSIDERATION; REQUEST TO RECLASSIFY THE HEARING FROM CLOSED TO OPEN; REQUEST TO STAY THE PROCEEDINGS; AND REQUEST TO REOPEN THE HEARING FOR ADDITIONAL TESTIMONY

On October 3, and 4, 2017, administrative law judge Sabrina Kong heard this matter in Rosemead, California. This was a District filed case where District contends that its psychoeducational, speech and language, and occupational therapy assessments were conducted properly such that Student would not be entitled to public funded independent assessments. The parties presented their cases; and the ALJ made various evidentiary rulings during the hearing. On the last day of the hearing, the ALJ requested that the parties submit closing briefs by October 19, 2017, and specifically asked the parties if that was enough time for them; and the parties agreed to submit the briefs by October 19, 2017.

On October 18, 2017, Student filed motions for reconsideration of evidentiary rulings made at hearing seeking to: admit a 2011 report by Dr. Gaines; admit Parents' personal videos of Student made two weeks before the hearing; developmental milestones printouts from various websites which Mother represented were incomplete; reverse Student's withdrawal of Margaret Clarke as a witness upon ALJ's order at hearing that Ms. Clarke could not testify on her cell phone, while standing on the side of a road; and continue the October 19, 2017 closing brief filing date. Student also filed motions to stay the proceedings; to change the closed hearing to an open hearing[1]; and reopen the hearing to allow Mother to continuing testifying because she was tired at the time she testified. OAH regulations allowed District to file a response/opposition by October 23, 2017, and District timely filed its opposition to the Motions.

District opposed the evidentiary rulings reconsideration on the grounds that they concerned evidence that was irrelevant, hearsay, duplicative, incomplete, and legally unsupported. District opposed the motions to stay the proceedings; requests to change the

[1] Mother's Request to Open to Hearing filed on October 13, 2017, is the same as this motion, and ruled on in this Order.

closed hearing to an open hearing; and extension for the due date of the closing briefs because they were untimely and moot. District further opposed a reopening of the hearing for Ms. Clarke and Mother to testify on the grounds of prejudice, waiver, and that it was unnecessary and duplicative of existing evidence.

APPLICABLE LAW

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.) The Education Code section 56505.1, subdivision (h) provides the ALJ authority to set reasonable limits on the hearing. (Ed. Code, § 56505.1, subd. (h).)

DISCUSSION

Reconsideration

Student alleges no new facts, circumstances, or law in support of the requests for reconsideration. All of Student's arguments in the motions for reconsideration were considered by the ALJ at the time of the hearing. Dr. Gaines' 2011 report and Parent's personal videos of Student taken two weeks before the hearing were irrelevant because the only relevant issues were if District conducted its assessments appropriately. The website printouts were incomplete. The ALJ permitted Ms. Clarke's telephonic testimony and accommodated Ms. Clarke's schedule. However, when Ms. Clarke represented, under the penalty of perjury, she was standing on the side of the road, on a cell phone; and unable to testify in the foreseeable future in a room by herself, the ALJ requested that Mother reschedule Ms. Clarke testimony. Mother subsequently withdrew Ms. Clarke as a witness. Further, Student did not show that Ms. Clark's testimony was relevant and/or not duplicative of other testimony provided in the hearing.

On the last hearing day, upon representation from the parties that 15-days to prepare the closing brief was "enough" time, the ALJ ordered that the closing briefs be filled on October 19, 2017. Student's motion to extend the due date of the closing brief was untimely filed on October 18, 2017, the day before the hearing briefs were due; and District's deadline to file its response to the motion was three business days after October 18, 2017, or on October 23, 2017. Both parties filed the closing briefs on October 19, 2017, rendering any request for additional time moot. All of the above motions for reconsideration are denied.

Other Requests

Student's request to change the closed hearing to an open hearing after the hearing ended was also untimely and moot because the hearing already ended. Student's request to stay the proceedings was also unsupported by any law, or reason, other than Mother's disagreement with the ALJ's hearing rulings. Lastly, Student requested that OAH reopen the hearing to permit Ms. Clarke to testify and Mother to continue testifying because Mother was tired at the time she testified and she believed that the ALJ was impatient. Throughout the hearing, ALJ offered Mother the opportunity to take breaks, and to review her notes which Mother declined. At the end of Mother's testimony, the ALJ asked if she had anything else to add, and Mother responded she did not. Student's requests to change the closed hearing to an open hearing; stay the proceedings; and reopen the hearing to allow for more testimony; are all denied.

All of Student's motions were based on Mother's disagreement[2] with the ALJ's rulings at the hearing and unsupported by any fact or law. Accordingly, all of Student's motions for reconsideration and other motions filed with the motions for reconsideration are denied.

ORDER

IT IS SO ORDERED.

DATE: October 24, 2017

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Sabrina Kong
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SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings

[2] Student's motions demonstrate a lack of understanding of the special education process and laws and regulations governing administrative hearings. Mother expressed at hearing that the rules in due process hearing applied loosely to her because she was not an attorney. The ALJ explained that the rules governing due process hearings applied to all parties; but that the ALJ will provide explanations and answer questions regarding the process, including reminding Mother that she had a right to an attorney.