BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of: | |
| VISTA UNIFIED SCHOOL DISTRICT, | OAH Case No. 2015010878 |
| v. | ORDER FOLLOWING PRE-HEARING CONFERENCE |
| PARENT ON BEHALF OF STUDENT. | |

On May 15, 2015, a telephonic prehearing conference was held before Administrative Law Judge Robert G. Martin, Office of Administrative Hearings. Tiffany Santos, Esq. appeared on behalf of Vista Unified School District. Student's Mother and Father appeared on behalf of Student. Interpreter Illio Constanza provided Spanish language interpretation.

A prehearing conference was previously completed in this matter on March 6, 2015. This further prehearing conference was ordered in conjunction with OAH's March 17, 2015 order granting Parents' request for a continuance of the hearing dates in this matter. At the May 15, 2015 prehearing conference, the ALJ and parties completed preparation for the continued hearing date by updating the parties' information concerning the witnesses and documents to be offered as evidence at the hearing, and reviewing the procedures to be followed at the hearing. Neither party submitted a PHC statement for the May 15, 2015 prehearing conference.

Based on discussion of the parties, the ALJ issued the following orders orally, on the record at the PHC. This written order confirms the ALJ's orders:

1. Student's Request for a Further Continuance of the Hearing. At the prehearing conference, Parents made an oral motion to further continue the hearing for 90 days. The motion was made on grounds that the ALJ at the March 6, 2015 prehearing conference refused to rule on whether Spanish language documents that Student might offer for admission into evidence at hearing would be admitted. Parents stated that any documents that they might offer for admission, in addition to those identified by District in District's exhibit list, would be in Spanish. Parents stated that at a previous hearing with OAH, Spanish language documents offered by Parents were not admitted, and Parents therefore did not want to go to the effort of preparing an exhibit list and exhibit binders without knowing that the documents would be admitted into evidence. Parents were unable to identify the specific documents they wished to introduce, the approximate number of documents, the general nature of the documents, or the issues to be addressed by the documents. Parents requested a 90-day continuance to assemble the documents and prepare for hearing.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

Parents did not establish good cause for a further continuance of this matter. District filed its complaint 107 days before the May 15, 2015 prehearing conference, on January 28, 2015. Although Parents were unable at the May 15, 2015 prehearing conference were unable or unwilling to describe the Spanish language documents that they wished to offer as exhibits, at the March 6, 2015 prehearing conference Parents described them as several letters between Parents and District and some individualized education program documents. The March 6, 2015 prehearing conference order did not suggest that such documents would not be considered for admission into evidence, but instead stated that all rulings regarding the admissibility of documents would be made at the hearing of the matter. Even if Parents were uncertain of whether the documents would be admitted into evidence, it would not have been unduly difficult for Parents to assemble them in the nine weeks since the March 6, 2015 prehearing conference. Student's request for a further continuance was therefore denied.

2. Hearing Dates, Times, and Location. The dates, time and location for the hearing of this matter remain unchanged from OAH's March 17, 2015 order granting Student's request for continuance. The hearing shall take place at the Office of Administrative Hearings, 1350 Front Street, Suite 3005, San Diego, California 92101. The hearing will start on Tuesday, May 19, 2015, continue on May 20-21, 2015, and continue thereafter day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. The hearing shall begin at 9:30 a.m., on May 19, 2015, and at 9:00 a.m. on all other days, 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.

3. Issues and Proposed Resolutions. The issue to be resolved at the due process hearing remains unchanged from the March 6, 2015 prehearing conference order, and is 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?

4. Exhibits. District at the prehearing conference stated that District had amended its exhibit list and intended to offer 38 documents for admission into evidence at hearing. District was ordered to file and serve District's final exhibit list by 5:00 p.m. on May 15, 2015.

Student at the prehearing conference identified no documents that Student intended to present at hearing. Student was ordered, by noon on Monday, May 18, 2015, to (i) file with OAH and serve on District a list of any documents Student intended to offer for admission into evidence at hearing; and (ii) deliver to District counsel a binder containing a copy of each exhibit Student intended to offer for admission into evidence. The admissibility of Student's documents will be addressed at hearing. District reserved its right to raise all appropriate objections to the admission of Student's proposed exhibits, including the objection that the proposed exhibits were not timely provided to District in accordance with Education Code section 56505, subdivision (e)(7).

5. Witnesses. District at the prehearing conference identified four witnesses that District intended to present at hearing: Steve Davis, Kathy Adams, Erin Dayus, and Brittany Roberson. Student identified three witnesses that Student intended to present at hearing: Student, Student's Mother, and Student's Father. Each party is responsible for procuring the attendance at hearing of its own witnesses. The parties will 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 written declaration under penalty of perjury, and at the discretion of the ALJ.

On the first day of hearing, before the first witness testifies, the parties and the ALJ will discuss the availability and order of testimony 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 discuss a detailed hour-by-hour schedule of all witnesses expected to testify at the hearing, based on an estimate of time for each party's direct and cross-examination. 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 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. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

6. 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.

7. Order of Presentation of Evidence. District shall present District's case first followed by Student. If a witness it to be called by both parties, each party shall be prepared to conduct all direct and cross examination of the witness. Witnesses will not be recalled, unless it is to rebut testimony offered by other witnesses who appeared after the witness in question.

8. Telephonic Testimony. Not applicable.

9. Motions. In the event that any further prehearing motion other than a challenge to a newly-assigned ALJ for the hearing is brought after this date, it 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 PHC.

10. Special Needs and Accommodations. A Spanish language interpreter is required for Student's mother. A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk at (916) 263-0880, the OAH ADA Coordinator at OAHADA@dgs.ca.gov or 916-263-0880 as soon as the need is made known. Additional information concerning a requests for reasonable accommodation is available on OAH's website at http://www.dgs.ca.gov/oah/Home/Accommodations.aspx.

11. 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.

12. Hearing Closed To the Public. The hearing will be closed to the public.

13. Settlement. The parties are encouraged to continue working together to complete 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. 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 AND SHALL 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. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

If the matter settles 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. The hearing dates will not be cancelled without this information.

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

IT IS SO ORDERED.

DATE: May 18, 2015

**/S/**

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings