

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CLOVIS UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012110503

ORDER FOLLOWING PREHEARING
CONFERENCE

On January 9, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Troy Taira, Office of Administrative Hearings (OAH). Barbara Ransom, Yvette Sterling, and Marianne Malveaux, Attorneys at Law, appeared on behalf of Student. Karen Samman, Attorney at Law, appeared on behalf of Clovis Unified School District (District). The PHC was recorded.

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

1. Hearing Dates, Times, and Location.

The hearing shall take place on January 22, 23, 24, and 25, 2013 at the District's offices located at 1680 David E. Cook Way, Clovis, CA 93611. The hearing shall begin at 1:30 p.m. the first day of the hearing and at 9:30 a.m. all other days, unless otherwise ordered.¹

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. Issues and Proposed Resolutions. The issues at the due process hearing are listed below:

¹ At a minimum for the hearing, 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 the District's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table. The District shall ensure that all parties and the ALJ have drinking water available to them.

a) Did the District's proposed individual education program (IEP) for the 2012-2013 school year deny Student a free appropriate public education (FAPE) in the least restrictive environment (LRE) in that it:

- 1) does not provide Student with goals consistent with his ability and proposed a curriculum that limited instruction in academic skills with no instruction in the age-appropriate subject matter;
- 2) does not provide Student with access to the general education curriculum and does not provide him with an age-appropriate curriculum;
- 3) does not provide the appropriate supports and services designed to meet Student's specific learning needs and enable him to access the general education curriculum; and
- 4) does not provide an education in the LRE.

b) That District's IEP for the 2012-2013 school year, implemented under duress, continues to deny Student a FAPE by failing to:

- 1) provide goals and objectives that meet Student's unique learning needs;
- 2) provide the supports and services that address Student's unique learning needs;
- 3) provide Student with paraprofessionals who are adequately trained and supervised to support Student in the general education curriculum and are able to assist Student to access the general education curriculum;
- 4) provide Student with paraprofessionals who are adequately trained and supervised to support Student in the special education classroom; and
- 5) provide the supports and services, including speech and language therapy, adequately trained paraprofessionals and a modified curriculum designed to meet his specific learning style, to ensure Student can access the general education curriculum.

c) That District failed to educate Student in the LRE during the 2012-2013 school year by failing to:

- 1) provide Student appropriate supports and services to allow Student to access the general education curriculum;

- 2) adequately train and supervise its paraprofessionals to provide the supports and services Student requires to receive his education in the general education curriculum;
- 3) modify the general education curriculum to address Student's unique learning style; and
- 4) provide Student access to the general education curriculum.

d) That District failed to implement Student's IEP for the 2012-2013 school year to ensure that Student attended the regular education class for 57 percent of his school day

Student's proposed resolutions are: An order that the District has denied Student a FAPE in the LRE; that the District provide Student with additional speech and language services; and that the District convene an IEP team meeting to draft an IEP with supports and services Student requires to receive his educational program in the general education classroom at Alta Sierra Middle School. Student requests that the District provide him with an inclusion program including curriculum modifications to the grade-appropriate general education academic subjects to meet Student's unique needs, teachers and paraprofessionals appropriately trained and supervised to provide special education and related services and who are trained in positive behavior approaches, inclusive practices, human sexuality and persons with disabilities and appropriate boundaries between student and professional.

Student also proposes that the District implement a buddy system to help Student adjust and to facilitate friendships and to keep Student from becoming an easy target for bullying, sexual abuse or drugs; that the District ensure that all staff who interact with Student are aware of his goals and objectives and can assist Student to become more independent and able to interact with his peers; and that the District hire an inclusion specialist to assist general education teachers and aides to implement a scientifically-based inclusive educational program for Student. Finally, Student proposes as a resolution that the District reimburse Parents the costs of providing Student educational services during the 2012-2013 school year; that the District reimburse Parents the costs of counseling services for Student; and that the District provide compensatory education.

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", "D", or some other designation, in front of the exhibit to identify it as 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. 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 the ALJ rules that it is admissible.

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 and at the discretion of the ALJ.

The parties will coordinate the availability and order of testimony of witnesses. The witness schedule will be finalized at the commencement of the due process hearing. 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. 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. If a witness is to be called by more than one party, the parties will be allowed to question the witness so that the testimony can be completed in a single session without requiring the witness to return.

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. Timely Disclosure of Witnesses/Exhibits. Education Code section 56505, subdivision (e)(7), provides for disclosure of witnesses and exhibits "at least" five business days prior to the hearing.

8. Order of Presentation of Evidence. As the party filing the complaint, Student will present his evidence first and then District will present its evidence.

9. Motions. The ALJ considered and denied Student's request to change the hearing location. The ALJ found that the current hearing location is reasonable convenient to Parents and Student. No other pretrial motions are pending or contemplated. 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 January 9, 2013.

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

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. Compensatory Education/Reimbursement. Any party seeking reimbursement of expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of expenditures, as part of its case in chief. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

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

14. Hearing Closed To the Public. At the request of Parent, the hearing will be closed to the public.

15. 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.

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

IT IS SO ORDERED.

Dated: January 10, 2013

/s/

TROY K. TAIRA
Administrative Law Judge
Office of Administrative Hearings