

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TEMECULA VALLEY UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2012101121

ORDER FOLLOWING PREHEARING
CONFERENCE

On January 14, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Susan Ruff, Office of Administrative Hearings (OAH). Student's parent and grandparent appeared on behalf of Student (Student). Cynthia Vargas, Attorney at Law, appeared on behalf of the Temecula Valley Unified School District (District). The PHC was recorded.

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

1. Hearing Date, Time, and Location. The hearing shall be held on Thursday, January 24, 2013, starting at 8:30 a.m. and ending at 5:30 p.m. The hearing shall take place at the Temecula Valley Unified School District Office, located at: 31350 Rancho Vista Road, Temecula, California 92592.

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. The issues at the due process hearing are listed below.

a) Did the District deny Student a free appropriate public education (FAPE) by failing to find Student eligible for special education?

b) Did the District deny Student a FAPE by failing to consider the results of outside assessments?

c) Did the District deny Student a FAPE by failing to assess Student in the areas of autism, occupational therapy, and mental health?

d) Did the District deny Student a FAPE by failing to conduct a functional analysis assessment?

e) Did the District deny Student a FAPE by failing to develop a behavior support plan?

f) Did the District deny Student a FAPE by failing to develop an individualized education program (IEP) specifically designed to meet Student's needs?

g) Did the District deny Student a FAPE by failing to consider parental input during the IEP process?

3. Exhibits. The District shall pre-mark its exhibits and place them in three-ring exhibit binders prior to the hearing. Each District exhibit shall be internally paginated by exhibit, or all of the District's exhibits shall be consecutively paginated, for example by Bates-stamping. Each exhibit binder shall contain a detailed table of contents. Student shall bring his documents to the first day of hearing, along with copies for the ALJ to mark as exhibits. The parties shall serve copies of their proposed exhibits on each other prior to the hearing, but shall not file exhibits with OAH prior to the hearing. As discussed during the PHC, the parties shall serve copies of their documents on each other by overnight mail on January 16, 2013, to arrive by Thursday, January 17, 2013.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not previously provided to the other side 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. The District has already supplied its witness list to Student. Student will provide the District with notice of any witnesses Student plans to call (besides the parent or grandparent) prior to the hearing.

5. 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 agreed that the witness may appear by telephone.

6. Motions. No pretrial motions are pending or contemplated by either party.

7. 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. There is to be no recording of the proceeding by any party without the ALJ's permission.

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

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

10. 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.

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

IT IS SO ORDERED.

Dated: January 14, 2013

/s/
SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings