

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. 2013010255

ORDER FOLLOWING PRE-HEARING
CONFERENCE

On January 23, 2012, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Marian H. Tully, Office of Administrative Hearings (OAH). Wendy Houseman, Attorney at Law, appeared on behalf of Student. Sarah L. W. Sutherland, Attorney at Law, appeared on behalf of Temecula Valley 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 February 5, 6, 7, 13 and 14, and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin each day at 9:30 a.m. and end at 5:00 p.m., with the exception of the first day of hearing, on which day the hearing shall begin at 10:00 a.m., unless otherwise ordered at the discretion of the ALJ.

The hearing shall take place at the District's offices located at 31350 Rancho Vista Rd., Temecula, California 91592.

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 expedited due process hearing are listed below.

a) Was Student's alleged sale of marijuana, for which the District has recommended expulsion, caused by, or have a direct and substantial relationship to, his disability?

b) Was Student's alleged sale of marijuana, for which the District has

recommended expulsion, the direct result of District's failure to implement or modify Student's IEP?

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. The parties shall serve their evidence binders on each other in compliance with Education Code section 56505, subdivision (e)(7). 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 in accordance with this paragraph and paragraph 7 below, shall not be admitted into evidence at the hearing unless it is supported by written declaration under penalty of perjury, and 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. Student identified, and District agreed to make available, the following District employee witnesses: Mary Venittelli, Dave Barret, James Taylor, Dennis Amador, and Tom Leach. 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, and Tom Leach, disclosed by Student at the prehearing conference, except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

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 parties shall attempt to reach agreement on a witness list for the first day of hearing. The District shall have witnesses available in case agreement on a witness list is not reached. 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.

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.

Student moved to allow Dr. Venugopal Depala to testify telephonically. District objects. Dr. Depala appears to be a key expert witness who practices in Temecula. Student offers no evidence that it is impossible or impracticable for Dr. Depala to testify in person. Student's motion is denied without prejudice to renew the motion at the time of hearing upon the submission of evidence demonstrating good cause for Dr. Depalato to testify telephonically.

7. Timely Disclosure of Witnesses/Exhibits. Student requests, due to Student's receipt of a substantial number of education records from District on January 23, 2013, that the parties be permitted to disclose additional exhibits five days prior to the hearing. District does not oppose this request. Accordingly, Student's request is granted, and any exhibits in addition to those previously disclosed in the prehearing conference statements, shall be disclosed and exchanged five days before the hearing.

8. Motions. No pretrial motions, other than motions to quash subpoenas, if any, are pending or contemplated. Any motion, other than motions to quash subpoenas, 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 23, 2013.

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

10. 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.

11. 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.

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

13. Hearing Open To the Public. At the request of the parents, the hearing will be open to the public. Student is to advise the ALJ should Student expect any group or members of the press to be present for the hearing. No one may record any part of the hearing, and all electronic devices must be off or silent in the hearing room unless permission to the contrary is obtained from the ALJ.

14. 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.

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

IT IS SO ORDERED.

Dated: January 23, 2013

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings