

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SADDLEBACK VALLEY UNIFIED
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012110542

ORDER FOLLOWING PRE-HEARING
CONFERENCE

On January 28, 2012, a recorded, telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Robert G. Martin, Office of Administrative Hearings (OAH). Attorney Epiphany Owen represented the Saddleback Valley Unified School District (District). Student's Parent represented Student.

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

1. Continuance of Hearing. Parent requested a continuance of the Hearing, previously scheduled for February 5-7, 2013, based on Parent's unavailability on February 5 due to a conflicting medical appointment for Student that could not be rescheduled within a reasonable time. Good cause existing for a one-day continuance due to Parent's unavailability, the hearing is continued one day, to commence on February 6, 2013.

2. Hearing Dates, Times, and Location. The hearing shall take place on February 6 and 7, 2013, beginning at 9:30 a.m. each day. The hearing shall take place at Saddleback Valley Unified School District, 25631 Peter A. Hartman Way, Mission Viejo CA 92691.

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. The issues at the due process hearing are those alleged in the due process complaint, as limited by Student in Student's Pre-Hearing Conference Statement and clarified by the parties and the ALJ at the PHC:

- a. Whether the District's September 2012 Physical Therapy Assessment was properly conducted, such that District need not provide an independent educational evaluation at public expense.

4. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. Student shall mark Student's exhibits using the numbers S1, S2, S3, etc., and District shall mark its exhibits using the numbers D1, D2, D3, etc. Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be sequentially Bates-stamped. Each exhibit binder shall contain a detailed table of contents. Each party will serve its exhibit binder on the other party no later than January 30, 2013. At the hearing, in addition to its own copy of its exhibits and the copy exchanged with the other party, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and an exhibit binder for use by witnesses (*i.e.*, each party should make four copies of its exhibits). 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 it is supported by written declaration under penalty of perjury, and the ALJ rules that it is admissible.

5. Witnesses.

Amendment of Student's Witness List to Include Parent (Student's Mother). Parent requested leave to add Student's Mother to Parent's witness list included in Student's PHC Statement, explaining that Student's Mother had been omitted as a witness because of Parent's uncertainty as to how to identify a testifying pro per Parent. Finding no prejudice to District arising from the addition of Student's Mother as a witness seven business days prior to the Hearing, where Parent in the PHC explained the expected nature and scope of the witnesses' testimony, the request is granted.

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, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

The parties are ordered to meet and confer by January 30, 2013, regarding the schedule of witnesses. The parties shall coordinate 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 time estimate of the length of each witness's direct examination testimony, and identify those witnesses the party intends to call, as opposed to witnesses the party may call, depending on the flow of the hearing and the evidence. Prior to the commencement of the due process hearing, 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 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. Telephonic Testimony. Student represented that Student was unsure whether telephonic testimony might be required to permit the testimony of one or more witnesses unavailable to appear in person. Whether a witness may appear by telephone is a matter within the discretion of the ALJ. Cal. Code Regs., tit. 5, § 3082, subd. (g). No later than January 30, 2013, Student shall file and serve a motion requesting leave to permit Student to present specific, identified witnesses by telephone. Student 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.

8. Timely Disclosure of Witnesses/Exhibits. The parties shall disclose their witnesses and exhibits no later than January 30, 2013 pursuant to Education Code section 56505, subdivision (e)(7), which requires disclosure of witnesses and exhibits at least five business days prior to the hearing.

9. Motions. No written prehearing motions were filed in advance of the PHC. However, the District indicated that it intends to move to quash Student's designation of District counsel Epiphany Owen and Glenn Goldby as witnesses on grounds of irrelevance and privilege, and to exclude testimony of Student's witness Terri Lynn Cole on grounds that Ms. Cole is not a Physical Therapist or otherwise qualified to offer expert testimony relevant to the issues in this matter. Student having been given notice of these motions at the PHC, the motions are to be addressed at the commencement of the Hearing. District is not required to submit the motions in writing. Any other 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 28, 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. Special Needs and Accommodations. Each party represents that no special accommodation is required for any witness or party.

13. Hearing is Closed To the Public.

14. 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.

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

IT IS SO ORDERED.

Dated: January 28, 2013

/s/

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings