

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

VISTA UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2013070169

ORDER FOLLOWING PRE-HEARING
CONFERENCE

On October 28, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Darrell Lepkowsky, Office of Administrative Hearings (OAH). Jonathan Read, Attorney at Law, appeared on behalf of the Vista Unified School District (District). Student's Mother and Father appeared on behalf of Student. Interpreter Elizabeth Camacho-Leon interpreted from English to Spanish and Spanish to English for Parents. The ALJ recorded the PHC.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on November 4, 5, 6, 7, and 8, 2013, and day to day thereafter, Monday to Thursday, at the discretion of the ALJ. The hearing shall begin at 1:30 p.m. on November 4, 2013, and at 9:00 a.m. all other days, unless otherwise ordered.

Student's parents requested that the hearing location be changed from the District's main offices. They suggested an alternative District location. Counsel for the District agreed to investigate the availability of the requested location and to inform OAH of its availability no later than 5:00 p.m. on Tuesday, October 29, 2013. If the alternative District location is unavailable, the parties have agreed that the due process hearing will be held at the San Diego OAH offices. OAH shall issue an order prior to the hearing confirming the hearing location.

If the hearing is held at a District location, the District shall ensure that the hearing room is configured into a courtroom setting and shall have at a minimum 1) a table for Parents; 2) a table for the District's legal representative and the District's representative; 3) a table for the witness; and 4) a table for the ALJ, near an electrical outlet. The District shall provide drinking water to all parties, witnesses and the ALJ. The water does not have to be bottled. The same hearing room shall be used for each day of hearing and shall be available

at least one hour prior to the commencement of the hearing each day. The hearing room shall be locked following the hearing each night.

The District shall also ensure that a separate and private room is available near the hearing room, for Student and his representatives during recesses and breaks. If the hearing is held at the OAH offices, no additional rooms will be available for either party.

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. Issue for Hearing and Proposed Resolution: Whether the District’s March 6, March 13, March 18, April 10, May 13, and May 28, 2013 individualized education plan (IEP) offer constitutes a free appropriate public education (FAPE) in the least restrictive environment for Student?

The District requests that OAH find that its IEP offer constitutes a FAPE in the least restrictive environment for Student and that OAH issue an order allowing the District to implement its offer without the consent of Student’s parents.

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 may have until 5 p.m. on Tuesday, October 29, 2013, to exchange all of their evidence. 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.

The parties are directed to meet and confer as to exhibits to ensure that there are no duplicate exhibits.

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 good cause, 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. 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 directed 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 are ordered to meet and confer no later than 5 p.m. Wednesday, October 30, 2013, to discuss the order of witnesses at hearing. At the beginning of the first day of hearing, the parties shall be prepared to provide the ALJ with a list of the witnesses and the date and time each will be testifying.

The District shall have witnesses available who are present District employees, 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. 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 listed by both parties that witness shall only testify once. Only one round of re-direct and/or re-cross examination will be permitted, unless otherwise ordered.

6. Telephonic Testimony. Neither party presently requests telephonic testimony.

7. Motions. The parties' request to exchange evidence by close of business Tuesday, October 29, 2013, is granted.

No other motions are pending or contemplated. Any other prehearing motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not made prior to or during the prehearing conference of September 30, 2013.

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

9. 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. If the hearing is held at the OAH offices, only water may be brought into the hearing room. If the hearing is held at the District's offices, the parties may bring liquid refreshments into the hearing room but no food while the hearing is in session.

10. Special Needs and Accommodations. Student's parents will require a Spanish translator.

11. Remedies. It is the District's burden to prove the necessity for any remedy requested.

12. Hearing Open To the Public. Upon request of Student's parents, the hearing will be open to the public. If the hearing is held at the District's offices, the District shall provide seating at the back of the hearing room, behind the parties' tables.

13. 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.

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

IT IS SO ORDERED.

Dated: October 28, 2013

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings