

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014030602

ORDER FOLLOWING PREHEARING
CONFERENCE OF JULY 14, 2014

On July 14, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Robert Helfand, Office of Administrative Hearings. Timothy A. Adams, Attorney at Law, appeared on behalf of Parents on behalf of Student (Student). Alefia Mithaiwala, Attorney at Law, appeared on behalf of the Capistrano 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 July 22, 2014 through July 24, 2014 at the District's offices located at 33122 Valle Road, San Juan Capistrano, CA 92675. The hearing shall continue day to day Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin at 9:30 a.m. each day of the hearing unless otherwise ordered.

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.

The District shall ensure that an appropriate room is available for the hearing, with separate counsel tables facing the ALJ's table and a separate table for the witness. The District shall also ensure that some type of water is available for all hearing participants, including the witnesses.

2. Issue and Proposed Resolutions. The issue at the due process hearing is:

Did Capistrano deny Student a free appropriate public education by failing to offer an appropriate educational setting and services, specifically one-to-one instruction and services, for the 2014-2015 school year?

Student requests that OAH issues an order (a) finding the individualized education program, adopted at the December 3, 2013 and February 18, 2014 IEP team meetings, was not appropriate; (b) reimburse Parents for the cost for Student to attend Sonrisa School; and (c) to place Student at Sonrisa prospectively.

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 represent that they have served 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.

The parties are directed to meet and confer by July 17, 2014, as to the exhibits so as to eliminate any duplicate exhibits from their respective evidence books.

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.

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 ordered to meet and confer by July 17, 2014, as to the schedule of witnesses. The parties have agreed to 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 following witnesses have been designated by both parties: Student’s parents, Allison Wray, Cherie Bene, Lisa De Acutis, Brannon Walders, Billye Williams, Sara Young, Anthony Bogle, and Amy Meyers-Megarthy.

Student has also designated the following witnesses, who are all designated as experts: Dr. Mitchel Perlman, Kelly McKinnon, Anabita Renner, Julie Johnson, Priya Guttal, and Christine Essex.

The District has also designated Carrie Wulf as a witness. The District has not designated any expert witnesses.

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.

Student has identified 16 witnesses to be called at the hearing, and the District has identified 11 witnesses. Ten of the witnesses are listed by both parties. In light of the fact three days have been scheduled for the hearing in this matter, it would be difficult to complete the hearing as scheduled. Therefore, by 11:00 a.m. on July 17, 2014, each party shall serve on the other party and on OAH a tentative witness list, including a time estimate of the length of each witness's direct examination testimony, and notations as to the 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.

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. Neither party has requested telephonic testimony.

7. Motions. Student and District have each requested that they be able to audio record the hearing to assist their respective counsel. The joint request is GRANTED on condition that each party turns off their recorders whenever the hearing is in recess. Both sides acknowledge that the only official record of the proceedings is that of OAH.

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 this prehearing conference.

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.

10. 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.

11. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for translation services. District is ordered to ensure that all facilities are compliant with the Americans with Disabilities Act.

12. Hearing Closed To the Public.

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.

DATE: July 14, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings