

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MOUNTAIN VIEW-LOS ALTOS UNION
HIGH SCHOOL DISTRICT.

OAH Case No. 2014051223

ORDER FOLLOWING PRE-HEARING
CONFERENCE

On July 28, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Joy Redmon, Office of Administrative Hearings. David Tollner, Attorney at Law, appeared on Student's behalf. Laurie Reynolds, Attorney at Law, appeared on Mountain View-Los Altos Union High School District's (Mountain-View's) behalf. The PHC was recorded.

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

1. Request for a Continuance and Hearing Dates, Times, and Location. On June 27, 2014, Mountain View filed a request to continue, asserting that multiple witnesses would be unavailable as grounds for the request. The Office of Administrative Hearings (OAH) granted the request on July 8, 2014, and set the matter for hearing for August 7, 2014, and continuing day after day.

On July 22, 2014, Mountain-View submitted another continuance request alleging that two necessary witnesses would be unavailable, one due to vacation and the other due to a recently scheduled surgery. Student objected to the continuance request on July 25, 2014. Mountain View established good cause for a brief continuance based upon a necessary witness's need for surgery.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).)

The hearing was continued to August 19, 2014. The hearing shall begin at 9:30 a.m. that day and conclude at 5:00 p.m. The hearing is also scheduled for August 20, 21, 26, 27,

and 28, from 9:00 a.m. to 5:00 p.m. each day. The hearing shall take place at Mountain View's offices, located at 1299 Bryant Avenue, Mountain View, CA 94040.¹

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 due process hearing are listed below.

Issue 1: Did Mountain View deny Student a free appropriate public education (FAPE) during the 2012-2013 school year by:

- a. failing to offer and provide appropriate supports and services including:
 - i. a full time one-to-one aide;
 - ii. social skills training;
 - iii. occupational therapy services for 60 minutes per week;
 - iv. speech and language services for two hours per week; and
 - v. academic tutoring for six hours per week.
- b. failing to offer and provide an appropriate transition plan;
- c. failing to offer and provide appropriate transition goals; and
- d. failing to offer and provide appropriate transition services including:
 - i. a functional vocation evaluation and training;
 - ii. post-secondary education classes;
 - iii. assistive technology and computer training;
 - iv. comprehensive learning/behavioral support plan;
 - v. mobility and travel training;
 - vi. integrated employment services;
 - vii. independent living skills program;
 - viii. transportation to and from the programs listed above; and
 - ix. vocational and functional living assessment.

¹ At a minimum for the hearing, the room shall be accessible and have separate tables capable of being moved into a courtroom configuration, as follows: (1) one table for Student's representatives; (2) one table for District's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table. District shall ensure that all parties and the ALJ have drinking water and tissue available to them.

Issue 2: Did Mount View deny Student a FAPE during the 2013-2014 school year by:

- a. failing to offer and provide appropriate supports and services including:
 - i. a full time one-to-one aide;
 - ii. social skills training;
 - iii. occupational therapy services for 60 minutes per week;
 - iv. speech and language services for two hours per week; and
 - v. academic tutoring for six hours per week.
- b. failing to offer and provide an appropriate transition plan;
- c. failing to offer and provide appropriate transition goals; and
- d. failing to offer and provide appropriate transition services including:
 - i. a functional vocation evaluation and training;
 - ii. post-secondary education classes;
 - iii. assistive technology and computer training;
 - iv. comprehensive learning/behavioral support plan;
 - v. mobility and travel training;
 - vi. integrated employment services;
 - vii. independent living skills program;
 - viii. transportation to and from the programs listed above; and
 - ix. vocational and functional living assessment.
- e. failing to implement the signed November 2013 IEP; and
- f. graduating student inappropriately.

Issue 3: Did Mountain View deny Student a FAPE by preventing Parent from meaningfully participating in Student's educational decision-making process or denying Student an educational benefit by predetermining Student's educational program in the IEP offers made in May 2013 and March 2014?

Proposed resolutions: Student requests vocational and functional living and psychoeducational assessments, vocational and functional living training, and social skills training, along with academic classes and post-secondary education. Student also requests assistive technology and training, a comprehensive learning behavioral support plan, and mobility and travel training. Further, Student requests integrated employment services and an independent living skills program. Student requests transportation to the programs and training, along with an independent consultant to assist in their development. Finally,

Student requests compensatory education and other post-secondary services and supports as needed.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall number exhibits to clarify the offering party (such as “S1” or “D2”). Each exhibit shall be internally paginated, by exhibit, or Bates-stamped. Each exhibit binder shall contain a detailed table of contents. Each party shall serve its exhibit binder on the other party in compliance with Education Code section 56505, subdivision (e)(7). At the hearing, each party shall supply two exhibit binders containing its exhibits for the ALJ and 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 shall not be admitted unless supported by a written declaration under penalty of perjury, and the ALJ admits it.

4. Witnesses.

a) Each party is responsible for procuring its own witnesses’ attendance. Each party shall make witnesses under its control reasonably available to the other party. The parties shall schedule witnesses to avoid delays and to facilitate witnesses being called only once. Parties may only call any witnesses disclosed in their prehearing conference statement, unless good cause is shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

b) Student identified 34 percipient and 2 expert witnesses for hearing. Mountain View identified 18 witnesses for hearing. The parties are ordered to develop a proposed witness schedule and provide it to the ALJ at the hearing. The ALJ will finalize the proposed witness list with the parties at that time. The ALJ has discretion to limit the number and time allowed for witness testimony.

5. Scope of Witness Examination. After the first direct and cross-examinations, each party is limited to examining the witness as to those matters raised in the immediately preceding examination. The parties shall establish their cases in chief during the first appearance of a witness so that each witness need only appear once.

6. Telephonic Testimony. A party requesting telephonic witness testimony shall move in advance for leave to do so; 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. Neither party requested telephonic testimony.

7. Electronic Recording of Hearing.

a. Audio Recording. At present, only Student requested to record the hearing. The following conditions apply to any recording: 1) OAH's recording is the only official recording; 2) the recorder will be turned on and off at the same time as the ALJ's recording, to avoid recording conversations while off the record; and 3) operating the party's recording mechanism will not be allowed to delay the hearing.

b. Video Recording. No party, witness or anyone else present may make any video recording of any part of the proceedings. Any person doing so shall be subject to sanctions.

8. Motions. At this time, no prehearing motions are pending or contemplated. Any 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 this PHC.

9. Compensatory Education and Reimbursement. Any party seeking expense reimbursement shall present admissible evidence, or a stipulation to the expense amount, as part of its case in chief. Any party seeking compensatory education shall provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

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

11. Conduct 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 the ALJ grants permission otherwise.

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

13. Hearing Closed To the Public. The hearing will be closed to the public. Student may notify the ALJ during the hearing if he requests the hearing be open to the public.

14. Settlement. The parties are encouraged to continue 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. If a settlement is reached fewer than five days before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH by telephone at (916) 263-0880. IF A FULL AND FINAL SETTLEMENT IS REACHED AFTER 5:00 P.M. THE BUSINESS DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035, AND SHALL ALSO

LEAVE CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY.

Dates for hearing will not be vacated until OAH receives withdrawal letter, or portions of the signed agreement withdrawing the case, with signatures. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless otherwise arranged with 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 excluding evidence or other sanctions.

IT IS SO ORDERED.

DATE: July 28, 2014

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings