

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PANAMA-BUENA VISTA UNION
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2014030618

ORDER FOLLOWING PRE-HEARING
CONFERENCE

On August 8, 2014, Administrative Law Judge (ALJ) Adrienne L. Krikorian, Office of Administrative Hearings (OAH) held a telephonic prehearing conference (PHC). Attorney Nicole Hodge Amey appeared on Student's behalf. Attorney Jennifer Rowe Gonzalez appeared on behalf of Panama-Buena Vista Union 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 August 19, 2014, and continuing day to day Monday through Thursday as needed at the ALJ's discretion, at the District's offices located at 4200 Ashe Road, Bakersfield, California 93313. The hearing shall begin at 10:00 a.m. the first day of the hearing and at 9:30 a.m. all other days 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.

2. Issues. The issue at the due process hearing is:

Did District appropriately assess Student in the area of speech and language such that Student is not entitled to an independent educational evaluation at public expense?

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. Individual documents must be marked separately and not cumulatively unless they are all part of one document, such as a chain of emails. 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, the parties shall supply an exhibit binder containing exhibits for use by the ALJ, and a second exhibit binder for use by witnesses.

The parties shall meet and confer before the first day of hearing in order to delete duplicate exhibits from the exhibit binders and to consolidate exhibits where possible. The parties shall not serve exhibits on OAH prior to the hearing.

The parties shall exchange resumes or curriculum vitae for each witness who is expected to testify as to their professional credentials. Notwithstanding the requirements of Education Code section 56505, subd. (e)(7), the parties shall exchange resumes not later than 24 hours before the witness is scheduled to testify.

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.

Based upon agreement of counsel, the parties are ordered to meet and confer telephonically at 10:00 a.m. August 15, 2014, as to the schedule of witnesses. District's attorney shall initiate the phone call.

On the first day of hearing, the parties shall provide the ALJ with a detailed schedule which shall include an estimate of time for each side's direct and cross examination. Each witness will only be called once to testify, except for rebuttal purposes, and both parties shall examine the witness on all issues when the witness is first called. 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.

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.

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, at the discretion of the hearing ALJ.

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.

7. Timely Disclosure of Witnesses/Exhibits. The parties shall exchange witness lists and exhibits in compliance with Education Code section 56505, subdivision (e)(7).

8. Order of Presentation of Evidence. District has the burden of persuasion and shall present its case first.

9. Motions. Immediately before the PHC commenced, the parties submitted a stipulation to consolidate this matter with a due process hearing request filed by Student against District on August 7, 2014 and to vacate and continue the dates in the consolidated matters consistent with a scheduling order to be issued in the new case. The new case has not yet been assigned a case number by OAH. The ALJ heard oral argument on the request to consolidate, and took the matter under submission. A separate order will be issued on the request to consolidate. This matter shall proceed as scheduled above unless or until the matters have been consolidated and the dates reset.

At present no other prehearing motions are pending or contemplated. Any 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 August 8, 2014.

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. No one in the hearing room shall be permitted to engage in text messaging while the hearing is on the record.

12. Special Needs and Accommodations. A Spanish language interpreter is required.

13. Hearing Closed To the Public.

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.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement as noted above, the parties shall submit a request for a status conference and provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

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

IT IS SO ORDERED.

DATE: August 8, 2014

/s/
ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings

