

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DEL MAR UNION SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2015010798

ORDER FOLLOWING PREHEARING
CONFERENCE AND GRANTING
CONTINUANCE AND SETTING DUE
PROCESS HEARING DATES

On February 13, 2015, a telephonic prehearing conference was held before Administrative Law Judge Caroline A. Zuk, Office of Administrative Hearings. Sundee M. Johnson, Attorney at Law, appeared on behalf of District. Parent appeared on behalf of Student. The PHC was recorded.

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

1. Continued Hearing Dates, Times, and Location. District requested its first continuance on the basis that District will be closed between February 16 and 20, 2015. Parent did not oppose the continuance on the basis that Student, who is not currently represented by an attorney, requires additional time to prepare for the hearing. OAH has reviewed District's request for good cause and considered all relevant facts and circumstances. The request is granted.

The hearing shall take place on April 20, 21 and 22, 2015 at the District's offices located at 11232 El Camino Real, San Diego, California 92130. The hearing shall begin at 1:30 p.m. the first day of the hearing and at 9:00 a.m. all other days unless otherwise ordered.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.

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 the 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.

District shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973 (20 U.S.C. § 701 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.

2. Issue. The issue at the due process hearing is listed below.

Whether District offered Student an appropriate program in its November 24, 2014 correspondence that is comparable to Student's most recent agreed-upon and implemented November 15, 2013 IEP developed by San Marcos Unified School District, by offering:

- (a) specialized academic instruction, group, 1,510 minutes per school week in a special day class for students with moderate-to-severe disabilities at Carmel Del Mar School in a classroom staffed by a full-time nurse;
- (b) occupational therapy, group, 900 minutes per school year;
- (c) adapted physical education, group, 45 times per school year, 30 minutes per session;
- (d) language and speech, individual, 1200 minutes per school year;
- (e) nursing services to monitor Student's seizures and administer Diastat, if necessary;
- (f) one-to-one instructional support for Student throughout his school day; and
- (g) appropriate staff to monitor seizures and administer Diastat, if necessary, on District-provided transportation.

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. 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.

While District filed its exhibit list with OAH on February 10, 2015, Student had not received it as of the PHC. Student did not file or serve an exhibit list. During the PHC, Parent provided an e-mail address to District to facilitate the exchange of exhibit lists.

During the PHC, the ALJ identified for the record the seven exhibits that District intends to offer as evidence at the hearing. Student did not identify any exhibits.

The District's attorney and Parent are ordered to meet and confer by April 13, 2015, to (a) exchange their exhibit lists and exhibit binders; (b) delete duplicate exhibits; and (c) exchange resumes or curriculum vitae for each witness who is expected to testify about their professional credentials.

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.

While District filed its witness list with OAH on February 10, 2015, Student had not received it as of the PHC. Student did not file or serve a witness list. During the PHC, the ALJ identified for the record the ten witnesses that District listed in its witness list. Student intends to call his grandparents as witnesses.

The District's attorney and Parent are ordered to meet and confer by April 10, 2015, to exchange witness lists and discuss the schedule of witnesses. The parties shall attempt to reach agreement on a witness list for the first day of hearing. District shall have witnesses available if agreement on a witness list is not reached as to the schedule for the first day. 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.

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.

7. Motions. Aside from the District's first request for continuance discussed above, there are currently no other pretrial motions pending or contemplated.

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. Special Needs and Accommodations. At present neither party anticipates the need for special accommodations for any witness or party or for translation services. Parent intends to bring Student to the hearing, and will rely on Student's grandparent(s) to care for him, if needed, during the hearing.

A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk at (916) 263-0880, or the OAH ADA Coordinator at OAHADA@dgs.ca.gov or (916) 263-0880 as soon as the need is made known. Additional information concerning requests for reasonable accommodation is available on OAH's website at <http://www.dgs.ca.gov/oah/Home/Accommodations.aspx>.

11. Hearing Closed To the Public. At the request of Parent, the hearing will be closed to the public.

12. 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.

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

IT IS SO ORDERED.

DATE: February 17, 2015

/s/

CAROLINE A. ZUK
Administrative Law Judge
Office of Administrative Hearings