

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. 2014100253

ORDER FOLLOWING PREHEARING
CONFERENCE

On February 20, 2015, a telephonic prehearing conference was held before Administrative Law Judge Susan Ruff, Office of Administrative Hearings. Kathleen Loyer, Attorney at Law, appeared on behalf of Student and Student's parents. S. Daniel Harbottle, Attorney at Law, appeared on behalf of the Capistrano Unified School 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 March 3, 4, and 5, 2015, and shall continue day to day thereafter, Monday through Thursday, as needed at the discretion of the ALJ. The hearing shall begin each day at 9:30 a.m., unless otherwise ordered. At the request of District's counsel, the hearing will end by 4:30 p.m. on March 3, 2015.

The hearing shall take place at the District's offices located at:

**33122 Valle Road
San Juan Capistrano, CA 92675**

The school 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 (29 U.S.C. § 794), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.

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. Did District deny Student a free appropriate public education from October 2012 to October 2014, by failing to provide appropriate placement and services to assure Student's progress, including:

- a) Appropriate assistive technology and direct assistive technology support services to address training and use of assistive technology across environments;
- b) Appropriate occupational therapy services to address fine motor and sensory issues;
- c) Appropriate physical therapy and adaptive physical education to address mobility and positioning for optimum classroom participation, use of assistive technology, and strength development;
- d) Appropriate speech and language therapy to address sensory and oral motor issues; and
- e) Appropriate vision assessment/services to address right eye muscle weakness and the impact of such on her classroom performance?

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 consecutively paginated, for example by Bates-stamping. 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.

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.

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. No witness will be heard by telephone unless all these requirements have been fulfilled.

Student's motion to allow Ms. Cottier to testify telephonically is granted. Student shall provide Ms. Cottier with a complete set of exhibit binders from each party, containing all of each party's exhibits, prior to the hearing. District shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness and the witness to hear rulings and objections.

7. Motions. During the PHC, Student made a motion to be permitted to audio record the hearing. Student's motion is granted on following conditions: 1) The recording by OAH shall be official record of the hearing; 2) District may also audio record the hearing; 3) The audio recording(s) shall be made only by counsel for the parties or their assistants and shall remain confidential in the same manner and to the same extent as the hearing itself; 4) No portion of the audio recording shall be played to any potential witness in the case without explicit consent from the ALJ hearing the case; 5) The recording equipment shall only be running when the hearing is "on the record" and the recording equipment shall be turned off during recesses, lunch and at any other time when the case is off the record; 5) The hearing will not be stopped or delayed at any time to accommodate the recordings or any problems with the recording equipment; and 6) Only audio recording is permitted – there shall be no video recording or photography of any type in the hearing room at any time.

The parties explained that they may bring a joint motion to continue the case. If such a joint motion is brought, it shall be filed with the Sacramento Office of Administrative Hearings and addressed to the presiding administrative law judge.

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. In consideration of individuals with allergies, counsel, parties and witnesses shall avoid the use of heavy perfumes or aromatic oils in the hearing room.

Cellular phones, pagers, 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 and 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.

A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned case manager 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>

12. Hearing Closed To the Public. At the request of the parent, the hearing will be 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 4:00 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.

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

IT IS SO ORDERED.

DATE: February 19, 2015

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings