

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MORENO VALLEY UNIFIED SCHOOL
DISTRICT AND PALMDALE UNIFIED
SCHOOL DISTRICT

OAH Case No. 2014110054

ORDER FOLLOWING PREHEARING
CONFERENCE

On March 27, 2015, a telephonic prehearing conference was held before Administrative Law Judge Judith L. Pasewark, Office of Administrative Hearings. Michelle B. Powers, Attorney at Law, appeared on behalf of Student. Angela Gordon and Lee Rideout, Attorneys at Law, appeared on behalf of Moreno Valley Unified School District and Palmdale 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. Districts' motion to continue the hearing, filed March 26, 2015, is denied. However, to allow the parties further time to discuss newly obtained information, the parties are ordered to continue settlement discussions through April 7, 2015. The hearing shall take place on April 8 and 9, 2015, and continue day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin each day at 9:00 a.m., unless otherwise ordered.

The hearing shall take place at Moreno Valley District's offices located at 25634 Alessandro Boulevard, Moreno Valley, California 92553. Moreno Valley 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. Moreno Valley shall also ensure that drinking water and tissues are available for all parties and witnesses.

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.

a) Did Districts deny FAPE by failing to actively “seek and serve” from April 2013 to the present?

b) Did Districts deny FAPE by failing to make Student eligible for special education and related services from April 2013 to the present?

c) Did Districts deny FAPE by failing to properly assess Students in all areas related to his suspected disabilities from April 2013 to the present?

d) Did Districts deny FAPE by failing to design an educational program to meet Student’s unique needs from April 2013 to the present?

e) Did Districts deny FAPE by failing to provide Parents with a full and complete copy of Student’s educational records, failing to assess Student in a timely manner, and failing to convene a timely IEP meeting, thus violating Parent’s and Student’s procedural rights?

Student is seeking the following remedies:

a) Districts be ordered to fund comprehensive independent educational evaluations, including neuropsychological evaluation, functional behavior analysis, educationally related mental health analysis, and assistive technology assessment;

b) Districts be ordered to provide compensatory education through non-public agencies in all areas of need as identified by the independent educational evaluations and transportation;

c) Districts be ordered to immediately provide Student’s attorney with complete copies of his school records;

d) Districts be ordered to reimburse all educational-related expenses incurred by Parent since April 2013;

e) Districts pay Student’s advocate to attend the IEP meeting to determine and develop appropriate placement, services, and goals for Student.

f) Moreno Valley be ordered to hold an IEP meeting and find Student eligible for special education based upon emotional disturbance and/or the disabilities as identified in the independent educational evaluations; and

g) Districts’ provide private placement for Student if an appropriate placement cannot be provided in the least restrictive environment.

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”). Districts are requested to use a joint exhibit binder. 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.

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 April 2, 2015, to schedule witnesses. The parties shall 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 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 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. Student’s request to allow Robin Gates to testify telephonically is granted. Student shall provide the witness with a complete exhibit binder from each party, containing all of each party’s exhibits, prior to the hearing. Moreno Valley shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness.

7. Motions. At present no 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 March 27, 2015.

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. Student has requested that the hearing room provide wheelchair access for Student's guardian, and Moreno Valley shall provide such a room.

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. This hearing is 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: March 30, 2015

/s/
JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings