

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT

v.

CAPISTRANO UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015060441

ORDER FOLLOWING PREHEARING
CONFERENCE

On July 31, 2015, a telephonic prehearing conference was held before Administrative Law Judge Chris Butchko, Office of Administrative Hearings. Delia Park and Roshni Gandhi, Attorneys at Law, appeared on behalf of Student. Donald Erwin, Attorney at Law, appeared on behalf of 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 10 through 14, 2015, and continue thereafter 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. and end at 5:00 p.m., with the exception of the first day of hearing, on which day the hearing shall begin at 9:30 a.m.

The hearing shall take place at the OAH offices of located at 15350 Sherman Way, Van Nuys, CA 91406.

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. Issue and Proposed Resolution. The issue at the due process hearing is whether Student was denied a free appropriate public education because District failed to provide the necessary supports and services to allow him to access the curriculum, as required to implement the November 2014 settlement agreement.

Student proposes that he be provided another year of attendance at Hollywood High School with the required supports and services as detailed in his IEP and the November 2014 settlement agreement as compensatory education.

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. 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. The parties have indicated that additional exhibits may be added, but will be timely exchanged between the parties as required for admissibility.

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 ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses’ testimony.

The parties have agreed to 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 and shall meet and confer on July 31, 2015, to discuss the availability of witnesses and any means by which the number of witnesses may be reduced. The parties will present to the ALJ a joint witness schedule for the day at the commencement of each day’s proceedings.

Student has initially designated 30 witnesses to be called at the hearing, and District has identified ten witnesses. Many are listed by both parties. Four days are currently scheduled for the hearing in this matter. Given the number of witnesses scheduled, it will be difficult to complete the hearing as scheduled. Therefore, to complete the hearing in a reasonable time and for the convenience of the witnesses, both parties are to be prepared to conduct their direct examination when the witness is first called.

5. Scope of Witness Examination. After the direct and the first 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.

No witnesses are currently proposed to testify by telephone, but District has indicated that it may be necessary to have Leslie Reich testify by telephone for health reasons. District's motion to allow Reich to testify telephonically, if necessary, is granted. District shall provide Reich with a complete exhibit binder from each party, containing all of each party's exhibits, prior to the hearing.

7. Timely Disclosure of Witnesses/Exhibits. Both parties have disclosed their witnesses and exhibits in their prehearing conference statements. Education Code section 56505, subdivision (e)(7), provides for disclosure of witnesses and exhibits "at least" five business days prior to the hearing. Accordingly, no additions to those listed beyond that time period shall be allowed, absent extraordinary circumstances as determined in the discretion of the ALJ.

8. Order of Presentation of Evidence. The witnesses who are to be called by more than one party will first be examined by Student's counsel. After their direct testimony, District may present them for direct testimony on its behalf and for any cross-examination. Each side will then have the opportunity for further questioning, limited in scope as set forth in Item 5, above.

9. Motions. No pretrial motions are pending or contemplated. District stated that it would move to challenge OAH's jurisdiction over a denial of a free and appropriate public education through implementation of a settlement agreement, but understands that it has already aired that issue through its previously-denied motion to dismiss this matter. Any motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not made prior to or during the prehearing conference. District has indicated it intends to object to any attempt by Student to play audio recordings of the individualized educational program meetings on the grounds of relevance. District may do so by objection at trial.

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.

12. 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.

13. 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 calendar clerk at (916) 263-0880, the OAH ADA Coordinator at OAHADA@dgs.ca.gov or 916-263-0880 as soon as the need is made known. Additional information concerning a requests for reasonable accommodation is available on OAH's website at <http://www.dgs.ca.gov/oah/Home/Accommodations.aspx>.

14. Hearing Closed To the Public. The hearing will be closed to the public. All witnesses, other than parents or one principal representing District, shall be barred from the hearing room.

15. 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.

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

IT IS SO ORDERED.

DATE: August 3, 2015

/s/

CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings