

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PAJARO VALLEY UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,

OAH Case No. 2015060991

PARENT ON BEHALF OF STUDENT,

v.

PAJARO VALLEY UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015050333

ORDER FOLLOWING PREHEARING
CONFERENCE

On July 31, 2015, a telephonic prehearing conference (PHC) was held before Administrative Law Judge B. Andrea Miles, Office of Administrative Hearings. Attorney Laurie Reynolds appeared on behalf of Pajaro Valley Unified School District. Attorney Jeffrey Randolph appeared on behalf of Student. Attorney Laurie Reynolds appeared on behalf of Pajaro Valley 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 August 11–13, 2015, and continuing day to day, Monday through Thursday at the discretion of the ALJ. The hearing shall be held at Pajaro Valley’s District Office, which is located at 294 Green Valley Road, Watsonville, California. The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 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 and Proposed Resolutions: The issues at the due process hearing were discussed and clarified during the PHC.¹ During the PHC, Student moved to dismiss one of her issues. Additionally, Student argued that Issue 2, as listed below, should be expanded to include the issue of predetermination. Student's argument was not persuasive. As such, the only issues which will be decided at hearing are reflected in this order. At the beginning of the hearing, the parties will have the opportunity to address any concerns or state any objections regarding the framing of the issues as set forth in this order.

Issues:

1. Did Pajaro Valley's 2014 triennial psychological and academic assessments of Student meet all legal requirements such that Student is not entitled to independent education evaluations at Pajaro Valley's expense?

2. Did Pajaro Valley procedurally deny Student a free appropriate public education by failing to discuss the continuum of educational placements at Student's May 27, 2014 IEP team meeting?

3. Did Pajaro Valley deny Student a FAPE in its May 27, 2014 individualized education program offer by failing to:

- a. identify all of Student's unique needs;
- b. develop appropriate and measurable goals; and
- c. offer Student an appropriate placement and related services?

Pajaro Valley's Proposed Resolution for Issue 1: Pajaro Valley seeks an order finding that Student was the prevailing party to all of the issues.

Student's Proposed Resolutions for Issues 2 and 3: Student seeks reimbursement for the cost incurred by Parents for placement at Chartwell School and prospective placement for Student at Chartwell.

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. The parties shall include only one document per each exhibit tab. 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 least five business days prior to hearing. At the

¹ The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

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.

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 timely disclosed except for good cause shown or in rebuttal, and at the discretion of the ALJ.

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 parties shall meet and confer as to the schedule of witnesses and projected length of direct and cross-examination. At the start of the hearing, the parties shall present a final schedule of witnesses with time estimates.

5. Order of Presentation of Evidence and Scope of Witness Examination: This matter is a consolidated case. Pajaro Valley's case has been designated as the primary case for the purpose of consolidation. For this reason and for the purpose of having evidence presented in a linear manner, Pajaro Valley shall present its case first. Pajaro Valley bears the burden of proof in its case (Issue 1) and Student bears the burden of proof in her case (Issues 2 and 3). Where Student and Pajaro Valley intend to call the same person to testify, each party will examine the witness immediately after the other party, so the witness will only need to be called to the witness stand once. 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. 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.

Student indicated that she may be requesting to have witnesses appear by telephone at a future time.

7. Electronic Recording of Hearing: At present, neither party intends to make an audio recording of the hearing. In the event that either party seeks to make an audio recording, the following conditions apply to any recording: 1) that OAH's recording is the

only official recording; 2) that the recorder will be turned on and off at the same time as the ALJ's recording, to avoid recording conversations while off the record; and 3) the operation of the party's recording mechanism will not be allowed to delay the hearing. Failure to comply with these conditions may result in a revocation of this order which grants the parties permission to make an audio recording of the hearing.

8. Motions: 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.

9. Stipulations: Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

10. 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 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.

11. Special Needs and Accommodations: 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 a request for reasonable accommodation is available on OAH's website at <http://www.dgs.ca.gov/oah/Home/Accommodations.aspx>.

At present neither party anticipates the need for special accommodation for any witness or party, or for interpreter services.

12. Hearing Closed To the Public: At the request of Student, 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 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: July 31, 2015

/s/

B. ANDREA MILES
Administrative Law Judge
Office of Administrative Hearings