

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**IN THE MATTER OF:  
PARENT ON BEHALF OF STUDENT,**

**v.**

**PARAMOUNT UNIFIED SCHOOL DISTRICT.  
OAH CASE NUMBER 2019060853**

**ORDER FOLLOWING PREHEARING CONFERENCE**

On September 27, 2019, Administrative Law Judge Linda Johnson, Office of Administrative Hearings, held a telephonic prehearing conference. The Administrative Law Judge will be referred to as an ALJ. The Office of Administrative Hearings will be referred to as OAH. The prehearing conference will be referred to as a PHC.

Serop Hovsepien, Attorney at Law, appeared on behalf of Student. Angela Gordon, Attorney at Law, appeared on behalf of Paramount Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

**HEARING DATES, TIMES, AND LOCATION**

**DUE PROCESS HEARING**

The hearing will take place on October 8, 9, and 10, 2019, and continue day to day at the discretion of the ALJ. The hearing shall begin at 9:30 AM on the first day of

the hearing and at 9:00 AM on all other days, unless otherwise ordered. Paramount anticipates needing three days for its case in chief, Student estimates three days for both Student's and Paramount's case.

### **HEARING LOCATION**

The hearing will be held at Paramount Unified School District, 15110 California Avenue, Paramount, California 90723.

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.

Paramount facilities shall fully comply 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 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities. Districts are required to file written certification with OAH that the facilities District provides comply with these laws.

Paramount shall file the required certification with two days of this Order and provide facilities that comply with these laws.

Before the beginning of the hearing, Paramount shall ensure that the hearing room is configured into a courtroom setting and shall contain:

- a table for Student and his representatives;
- a table for Paramount's legal representative and special education representative;

- a table for the witness;
- a table for the ALJ, near an electrical outlet with a chair that adjusts to an appropriate height for typing at the table provided; and
- water and tissue available for the participants.

The same hearing room shall be used for each day of hearing and shall be available at least one hour before the beginning of the hearing each day. The hearing room shall be locked following the hearing each night. Paramount shall ensure that the hearing room and access to it are in compliance with the all laws governing accessibility of government facilities to persons with disabilities.

Paramount shall also ensure that one parking space is available on each hearing day for each of the following: the ALJ, Parents, Student's attorneys, District's attorneys, and witnesses.

## **ISSUES AND PROPOSED RESOLUTIONS**

The issues at the due process hearing, and proposed resolutions, as alleged in the complaint and clarified by the parties and the ALJ during the prehearing conference are:

### **ISSUES**

1. Did Paramount deny Student a free appropriate public education by failing to comprehensively assess Student pursuant to the September 14, 2017 assessment plan?
2. Did Paramount deny Student a free appropriate public education by failing to conduct an occupational therapy assessment pursuant to the September 14, 2017 assessment plan?

3. Did Paramount deny Student a free appropriate public education by failing to conduct a physical therapy assessment pursuant to the September 14, 2017 assessment plan?
4. Did Paramount deny Student a free appropriate public education by failing to assess Student in all areas of suspected disability by failing to refer Student for an educationally related mental health services assessment pursuant to the February 26, 2018 psychoeducational assessment?
5. Did Paramount deny Student a free appropriate public education by failing to place Student in the least restrictive environment pursuant to the May 20, 2019 individualized education program?
6. Did Paramount deny Student a free appropriate public education pursuant to the October 3, 2017 individualized education program by:
  - a. Failing to include a reading fluency or vocabulary goal;
  - b. Failing to include a writing fluency or spelling goal;
  - c. Creating a math goal that was not reasonably calculated to ensure meaningful educational benefit; and
  - d. Failing to include a mathematics facts, mathematics reasoning, multiplication, or word problems goal?
7. Did Paramount deny Student a free appropriate public education pursuant to the October 2, 2018 individualized education program by:
  - a. Failing to include a reading fluency, reading comprehension, or vocabulary goal;
  - b. Creating a writing goal that was not reasonably calculated to ensure meaningful educational benefit;
  - c. Failing to include a written expression, writing fluency, grammar, or spelling goal;

- d. Creating a math goal that was not reasonably calculated to ensure meaningful educational benefit; and
- e. Failing to include a mathematics facts, mathematics reasoning, addition, subtraction, multiplication, division, or word problems goal?

## **PROPOSED RESOLUTIONS**

Student requests an order from OAH determining that a nonpublic school is the least restrictive environment. Student also requests independent educational evaluations in the areas of educationally related mental health services, occupational therapy, and physical therapy and compensatory education and services.

OAH has not received a copy of Paramount's response to Student's complaint. Paramount shall file its response with OAH within three business days from the date of this PHC.

## **EXHIBITS**

### **BINDERS**

Exhibits shall be pre-marked and placed in three-ring binders before the hearing. Exhibit binders shall include a tab for each exhibit. Each binder shall contain a detailed table of contents which clearly identifies the tabs and documents. The ALJ and witnesses must be able to easily turn to exhibit tabs and to turn pages in the binders. Multiple binders may be submitted if necessary.

## **TAB AND PAGE NUMBERS**

The parties shall place a letter followed by a number on each tab to identify each exhibit. Student shall use the letter S before the number to identify Student's exhibits. Paramount shall use the letter D before the number to identify Paramount's exhibits. For example, S-1 means Student's exhibit tab 1 and D-1 means Paramount's exhibit tab 1. Each page of each binder shall be numbered consecutively from the first page of the first exhibit to the last page of the last exhibit in the binder. Parties may use a Bates-stamp type system for numbering.

## **CONTENT**

Each exhibit shall consist of one document. Separate documents may not be combined into one exhibit. Emails or letters may be consolidated into one exhibit if they are part of a single chain of messages. Documents offered as evidence to support a request for reimbursement must be separated by vendor and should be internally chronological where possible. Exhibits in the binders should be in chronological order.

Parties should include resumes or curriculum vitae for each witness who is expected to testify as to their professional credentials. Notwithstanding the requirements of Education Code section 56505, subdivision (e)(7), the parties shall exchange resumes not later than 24 hours before the witness is scheduled to testify.

Paramount's binder shall include a color copy of the school calendar for each school year in question and shall have witnesses available to explain the calendar if necessary.

## **COPIES OF BINDERS**

The parties shall serve copies of their evidence binders on each other. This exchange is required by Education Code section 56505, subdivision (e)(7). Each party shall bring two additional sets of the binders containing their exhibits to the hearing. One set will be used by the ALJ, and the other set will be used by witnesses. The parties may not serve exhibits on OAH before the hearing.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not timely exchanged shall not be admitted into evidence at the hearing unless the ALJ rules that it is admissible.

## **WITNESSES**

Parties are responsible for producing their own witnesses unless otherwise ordered by the ALJ. Parties shall make witnesses under their 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, 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. Education Code, section 56505.1, subd. (h), empowers the ALJ to set a reasonable limit on the length of the hearing after consideration of four factors. The first two factors are the issues to be heard and the complexity of facts to be proven. The second two factors are the ability of the parties or their representatives to present their respective cases and the parties' estimates of the time needed to present their cases.

## **MEET AND CONFER**

The parties are encouraged to review and shorten their witness and exhibit lists before the hearing. Evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear. The parties are ordered to meet and confer no later than October 4, 2019. The parties shall discuss the availability of witnesses, the order of witnesses and the length of witness testimony. The parties should attempt to eliminate duplicate exhibits from their binders. The parties may discuss whether they can produce a written stipulation stating basic facts to shorten the length of time needed for the hearing.

## **EVIDENCE PRESENTATION**

In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 62.) In this case Student requested the hearing and Student's case-in-chief shall be presented first, followed by Paramount.

### **WITNESS LISTS**

The parties shall give the ALJ a joint proposed witness list for the first day of hearing. The list should include dates and time estimates of expected testimony. In the event an agreement cannot be reached, each party shall prepare a separate written list. Paramount shall have witnesses available in case there is no agreement. Before the hearing begins, the ALJ and the parties will discuss the length of time anticipated for direct and cross-examination of each witness and scheduling issues for individual witnesses. The ALJ will finalize the witness schedule. Parties shall be prepared at the end of each day to discuss the witnesses to be presented the next day and the estimated time the testimony each witness is expected to take.

## **SCOPE OF WITNESS EXAMINATION**

Each witness shall be called to testify only once, except for rebuttal purposes. All parties shall examine witness on all issues when the witness is first called. Requiring a witness to appear only once takes precedence over the order in which parties presents their case in chief.

## **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 request for leave to do so before the hearing, unless the opposing party has stipulated that the witness may appear by telephone. The party offering the witness shall provide the witness with a complete set of exhibit binders from all parties before the hearing. The binders must be exact paper copies of all of each party's exhibits. Electronic copies are not acceptable. The party presenting the witness shall ensure the witness testifies from a private location with no other persons present. The party offering telephonic testimony shall ensure that the witness has telephone equipment that allows clear testimony at a volume that allows clear transmission of what the witness is saying, allows the witness' testimony to make a clear recording, and allows the witness to hear objections and rulings. Paramount shall ensure that the hearing room has telephone speaker equipment that allows everyone in the room to hear the witness, and allows the witness to hear objections and rulings. No witness will be heard by telephone unless all these requirements have been fulfilled.

## **ELECTRONIC RECORDINGS**

### **Audio Recording**

A party may request permission to make an audio recording of the hearing. Permission to make an audio recording is subject to the ALJ's discretion and based upon certain conditions. Such requests are routinely granted on the following conditions:

- the OAH recording is the only official recording;
- the parties shall turn the recording device on and off at the same time that the ALJ is on and off the record to avoid recording conversations while off the record;
- the recording device will be removed by the party recording during any recess where the party leaves the room;
- operation of the party's recording mechanism will not be allowed to delay the hearing;
- a parties' recording may not be used to prepare the testimony of a witness in the hearing;
- the recording shall not be shared with any non-party, possible witness, or through social media;
- The parties shall not use the recording in any subsequent due process hearing; and
- the recording is subject to the same confidentiality as the due process hearing.

Student's and Paramount's request is granted, subject to these conditions.

### **Video Recording**

No party, witness or anyone else may make any video recording of any part of the proceedings. Any person doing so shall be subject to sanctions.

### **Recordings as exhibits**

Excerpts of an audio record of an individualized education program team meeting must be transcribed and offered as documentary evidence. The portion of the audio record transcribed shall be provided to the opposing party with the transcript to allow an opportunity to verify the accuracy of the transcription. Transcription need not be done by a certified court reporter. Electronic recording of the excerpts of the audio record shall be included with the transcript, at the ALJ's discretion, to allow the ALJ to listen to the recording as well as read the transcript.

### **COMPENSATORY EDUCATION OR REIMBURSEMENT**

Any party seeking reimbursement for expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of the expenditures. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

### **MOTIONS**

No prehearing motions are pending. Student has contemplated filing a motion to continue to allow for additional time for the parties to reach a settlement. Any motion that was not filed three business days before the Prehearing Conference, shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not timely filed. Student is advised that he will still need good cause for any such motion.

## **STIPULATIONS**

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

## **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, recorders, and other noisemaking electronic devices shall be shut off or set to vibrate during the hearing unless the ALJ grants permission otherwise. No food or drinks other than water will be permitted in the hearing room during the hearing.

## **LANGUAGE INTERPRETERS AND REASONABLE ACCOMMODATIONS**

A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in a mediation or hearing may contact OAH at (916) 263-0880, or send an email to [OAHADA@dgs.ca.gov](mailto:OAHADA@dgs.ca.gov) as soon as the need is known. The e-mail should have "Request for Accommodation" in the Subject Line. Additional information concerning requests for reasonable accommodation is available on OAH's website at: <https://www.dgs.ca.gov/OAH/Services/Page-Content/Office-of-Administrative-Hearings-Services-List-Folder/Accommodations-at-OAH>.

## **HEARING OPEN TO THE PUBLIC**

At Student's request, the hearing will be open to the public. The parties, should inform the ALJ if Student expects any group or members of the press to be present during the hearing. No one may record any part of the hearing, and all electronic devices must be off or silent in the hearing room unless permitted by the ALJ.

Parents should be aware that by opening the hearing, District employees who are not witnesses, or other people that Parents might not know, may attend the hearing. Persons disclosed on either party's witness list, with the exception of District's representative, will be excluded from the hearing until their testimony has been completed. The parties shall confer on October 2, 2019, as to the seating requirements for members of the public. The parties shall immediately notify each other and OAH if they are aware that there will be media attending the hearing.

Government Code, section 11425.20 empowers the ALJ to order an open hearing to be closed or make other protective orders to the extent necessary or proper to ensure a fair hearing in the circumstances of the particular case. The ALJ may also exclude persons whose actions impede the orderly conduct of the hearing, restrict attendance because of the physical limitations of the hearing facility, or take other action to promote due process or the orderly conduct of the hearing. (Tit. 1, Cal. Code Regs., § 1030.)

## **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 if 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. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH at <https://www.applications.dgs.ca.gov/oah/oahsftweb>.

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.

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 before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

## **FAILURE TO COMPLY**

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

## **IT IS SO ORDERED.**

DATED: September 27, 2019

DocuSigned by:  
*Linda Johnson*  
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Linda Johnson  
Administrative Law Judge  
Office of Administrative Hearings