BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PLEASANT VALLEY SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2019090819

and

PARENT ON BEHALF OF STUDENT,

v.

PLEASANT VALLEY SCHOOL DISTRICT AND VENTURA COUNTY OFFICE OF EDUCATION,

OAH CASE NUMBER 2019080672

ORDER DENYING MOTION TO SET ASIDE PROCEEDINGS;

GRANTING REQUEST TO CONTINUE HEARING; AND SETTING ADDITIONAL HEARING DAYS

On August 19, 2019, Student filed a request for due process hearing, referred to as a complaint, naming Pleasant Valley School District and Ventura County Office of Education. The Office of Administrative Hearings is referred to as OAH. Pleasant Valley and Ventura are collectively referred to as Respondents.

Student's complaint alleged Respondents denied him a free appropriate public education from February 2018 through the date their complaint was filed by failing to provide physical therapy and adaptive physical education services. Student's complaint also alleged Respondents denied meaningful parental participation in the development of Student's individualized education program, referred to as an IEP, for the 2019-2020 school year by refusing to work with Parents to develop an appropriate IEP and by failing to offer placement in the least restrictive environment appropriate for Student for the 2019-2020 school year.

On August 20, 2019, OAH issued a Scheduling Order setting a prehearing conference on September 30 2019, and hearing on October 8, through October 10, 2019. Respondents served a joint response to Student's complaint on August 29, 2019.

On September 23, 2019, Respondents filed a complaint naming Student and a Motion to Consolidate Respondent's case with Student's case. Respondents' complaint alleged IEPs, developed on March 7, 2019 and May 31, 2019, offered Student a free appropriate public education and should be implemented without parental consent.

On September 23, 2019, 2019, OAH issued a Scheduling Order in Respondent's case setting a prehearing conference on October 7, 2019, at 1:00 p.m. and hearing on October 15, through October 17, 2019.

On the morning of September 30, 2019, Student sent OAH a letter stating Student's case, OAH case number 2019080672, "should take no more than one day." The letter included a statement of the "issues that remain to be resolved," a statement Student did "not plan on having any witnesses," and attached copies of documents.

As scheduled, on September 30, 2019, at 1:00 p.m. the Prehearing Conference was held in Student's case before Administrative Law Judge Robert Martin. Prehearing Conference is referred to as PHC. The Administrative Law Judge is referred to as the ALJ. Parents represented Student during the PHC. Attorney Melissa Hatch represented Respondents. During the PHC, ALJ Martin heard arguments on Respondent's motion to consolidate and granted the motion to consolidate Student's case with Respondents' case. District's case was deemed the primary case in the consolidated matter. The PHC was continued to October 7, 2019, and the hearing for the consolidated cases to October 15, 16, and 17, 2019.

On October 2, 2019, Respondents filed an amended PHC statement requesting security at the hearing set for October 15, 16, and 17, 2019. In the PHC statement, Ms. Hatch alleged Mother made "physical threats of harm against District's counsel and ALJ Martin, such as … 'they're lucky I wasn't in front of them' because 'I'd be in jail..." and that Mother said she "wanted to punch Ms. Hatch and ALJ Martin in the face" and she would 'beat the shit' out of 'the judge.'" Ms. Hatch further alleged, among other things, that Mother threatened "a bloodbath" at one of Student's IEP meetings, resulting in a police report and continuation of the IEP.

On October 4, 2019, Student filed a PHC statement. Parent's stated the hearing should not take more than one day and that they intended to call two witnesses. Parents requested a hearing room that would accommodate a wheelchair, electrical outlets to accommodate medical equipment, and to take frequent breaks during the hearing.

On October 7, 2019, ALJ Martin held the PHC. Parents represented Student. Ms. Hatch represented Respondents. ALJ Martin denied Respondents' request for security without prejudice to file a formal motion. The Order Following PHC was served on the parties on October 8, 2019.

On October 8, 2019, Respondents filed a Motion for Security at Due Process Hearing supported by evidence demonstrating Parent made public threats of physical harm to Respondent's attorney and ALJ Martin.

On October 9, 2019, in the interests of safety and in order to maintain order during the due process hearing, OAH issued a Notice of Location Change for Due Process Hearing, changing the location of the hearing to OAH offices located at 15350 Sherman Way, Suite 300, Van Nuys, CA 91406. The hearing room in Van Nuys accommodates a wheelchair, has electrical outlets to accommodate medical equipment, and allows for frequent breaks during the hearing. OAH served notice on all parties by secure e-file transmission and by overnight delivery. The administrative record includes proof that both parties received the Notice of Location Change on October 10, 2019. Neither party objected to the location change.

On October 11, 2019, OAH issued an Order assigning ALJ Cole Dalton to preside over the hearing on October 15, through October 17, 2019, and stating the hearing location was OAH offices located at 15350 Sherman Way, Suite 300, Van Nuys, CA

91406. The administrative record reflects that both parties received this Order. Neither party objected to the location.

On October 15, 2019, at 9:30 AM, ALJ Dalton was ready to proceed with the hearing at OAH offices in Van Nuys. The parties were not present. OAH learned that both parties appeared at Pleasant Valley District offices in Camarillo. Ms. Hatch advised OAH she would notify her witnesses, proceed to the OAH Van Nuys office and arrive within the hour. OAH contacted Mother at the Pleasant Valley District offices in Camarillo. Mother informed staff she was not aware of the location change and she could not travel to Van Nuys that day. Staff informed Mother she could contact the ADA coordinator for an accommodation and she could request the hearing go dark for a day to process the request.

Respondents offered evidence on October 15, and 16, 2019. The matter was continued to November 7, 2019, to allow briefing.

On October 17, 2019, OAH received a letter from Mother seeking to "set aside the case as well as an injunction" "and asking for a reschedule." On October 18, 2019, Respondents' filed a Request for Clarification as to the nature of Parents' motion.

On October 21, 2019, Parents filed a Notice of Clarification requesting that "all proceedings that have occurred be set aside and a new hearing be held." The request was "made due to the fact that a change of venue was made without consideration for my disability and terminal illness."

On October 22, 2019, Respondents filed opposition to what they characterized as Student's Motion to Set Aside the Due Process Hearing and Motion for New Hearing on the grounds the motion was untimely, there was no process under the IDEA or California

law for such a procedure and that Mother did not actually have a medical condition that would have prevented her from attending the hearing at the Van Nuys location.

MOTION TO SET ASIDE PROCEEDINGS

Both parties have the right to a due process hearing in a consolidated matter. The consolidated matter proceeded on the date and at the location set for hearing. All parties were twice served with notice of the location for the hearing. When staff spoke to Mother on the first day of hearing Mother was informed she could seek an accommodation if she was unable to attend the hearing in Van Nuys and that she could request the hearing to go dark for a day to allow her time to contact the ADA coordinator to request the accommodation. Student did not request accommodations or a continuance due to Mother's health or distance from the Van Nuys location.

As the primary case, Respondents proceeded on the date set. As required by law and stated in the Prehearing Conference Order, Respondents provided Parents their exhibit binders before the hearing began. Respondents' Exhibits numbered 2, 3, 4, 7, 9, 10, 11, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 57, 61, 62, 63, 65, 66, 67, 68, 69, 71, 72, 73 were admitted into evidence. OAH will provide the parties a flash drive containing the recording of the first two days of the hearing.

There is no authority for setting aside evidence in an ongoing matter pending before OAH. The request to put aside a portion of an ongoing hearing and to start the hearing over again is denied.

MOTION TO CONTINUE HEARING AND ADD HEARING DAYS

OAH understands Parent's request to reschedule and for a new hearing to be a motion to continue the consolidated cases and set additional days.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) Good cause may include the unavailability of a party, due to illness or other excusable circumstances, or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (Ed. Code, § 56505, subd. (f)(3); Cal. Rules of Court, rule 3.1332(c).) OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The record reflects good cause to set two additional hearing days.

Initially, Parents did not intend to call any witnesses in Student's case and estimated the hearing would take not more than one day. Parents' PHC statement filed October 7, 2019, estimates the hearing should take no more than one day and that Student will call two witnesses. Respondents will require time to question Parents' witnesses. Accordingly, the Order setting due date for briefs will be vacated and the matter is continued for two additional days of hearing.

ORDER

1. Student's motion to set aside proceedings is denied;
2. The November 7, 2019 due date for briefs is vacated;
3. The hearing in the consolidated matter is continued to November 13, 2019, beginning at 9:30 a.m., through November 14, 2019, beginning at 9:00 a.m., unless otherwise ordered; and

4. The hearing will be held at Pleasant Valley School District, 600 Temple Ave., Camarillo, CA 93010, unless otherwise ordered. A bailiff will be present.

DATED: October 28, 2019

DocuSigned by:
Marian Tully
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Marian H. Tully
Presiding Administrative Law Judge
Office of Administrative Hearings