BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. NEW HAVEN UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013010236 ORDER DENYING REQUEST FOR ACCOMMODATION

On January 8, 2013, Student filed a request for due process hearing (complaint) against the New Haven Unified School District (District). The Office of Administrative Hearings (OAH) set the matter for hearing on March 5, 2013. On February 15, 2013, at the request of the parties, OAH continued the matter to April 16, 2013.

On April 11, 2013, Student moved to amend his complaint. OAH denied Student's request and the matter proceeded to hearing. However, on the first day of hearing, April 16, 2013, the matter was again continued and set for hearing to commence on May 29, 2013. OAH has secured certified American Sign Language (ASL) interpreters for the hearing.

On May 16, 2013, Student filed a request for OAH to provide a Certified Deaf Interpreter (CDI), in addition to the ASL interpreters. Student's request was accompanied by a sworn declaration from Student's attorney, Nicole Hodge Amey. The request states that on May 16, 2013, for the first time in her representation of Student, Ms. Amey learned that Mother required a CDI. The request further states that Student's advocate believes the matter should not proceed to hearing without a CDI.[1]

APPLICABLE LAW AND DISCUSSION

OAH does not have regulations governing reasonable accommodation requests by parties to an administrative hearing before OAH. Therefore, OAH looks for guidance to applicable law found in the Rules of Court, federal and state law. It is the policy of the courts to ensure that persons with disabilities have equal and full access to the judicial system in accordance with the Americans with Disabilities Act (ADA). (Cal. Rules of Court,

[1] To the extent that Student's request may be considered a motion to continue, OAH will withhold ruling on the continuance request for three business days, from filing of Student's request, for District to respond.

rule 1.100.) The ADA provides that "[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." (42 U.S.C. § 12132.)

Any request for accommodation made on behalf of a party must include a "description of the accommodation sought, along with a statement of the impairment that necessitates the accommodation." (Cal. Rules of Court, rule 1.100, subd. (c)(2); Cal. Code of Regs., tit. 2, § 58.8, subd. (d)(2).) The declaration by Ms. Amey, submitted on behalf of Mother, does not include a sufficient description of Mother's impairment and the need for the requested accommodation. Without this, OAH is unable to determine whether the requested accommodation of a CDI, in addition to the ASL interpreters, is reasonably necessary to allow Mother access to the due process proceedings.

The facts in the procedural history of this matter further support the determination that insufficient information has been provided regarding Mother's need for the requested accommodation. This matter was filed in January of 2013, therefore it can be assumed that Ms. Amey has communicated with Mother and prepared Mother for the hearing for at least five months. The parties participated in mediation on March 19, 2013, without a CDI and Student did not assert that Mother could not adequately participate in mediation due to the lack of a CDI. The parties appeared on April 16, 2013, on the first day of hearing, ready to proceed. Again, a CDI was not present and Student did not assert, at that time, that Mother could not access the proceedings without a CDI. Finally, Ms. Amey states that she only learned of the need for a CDI on May 16, 2013, through Mother's advocate. In light of this history of Mother being able to participate in mediation, communicate with her attorney, prepare for hearing and appear on the first day of hearing without a request for a CDI, Student has failed to provide a sufficient description of Mother's impairment and the need for the requested accommodation.

When an applicant fails to provide the necessary information concerning the applicant's impairment, a court may require the applicant to submit additional information regarding the applicant's impairment. (Cal. Rules of Court, rule 1.100, subd. (c)(2).) Here, OAH has the discretion to require that a sufficient description of Mother's impairment and the need for further accommodation be submitted consistent with the rule. Furthermore, OAH may deny the request for accommodation if there has been a failure to satisfy the requirements of the rule, in this case, that a sufficient description of the disability be provided with the request for accommodation. (Cal. Rules of Court, rule 1.100, subd. (f)(1).)

Accordingly, at this time, OAH is denying the request for accommodation for Mother, specifically the request for a CDI in addition to the ASL interpreters, due to the insufficiency of the request. Student may resubmit the request with a sufficient description of Mother's impairment such that OAH can determine whether the accommodation of a CDI, in addition to the ASL interpreters, is necessary.

ORDER

Student's request for a CDI, in addition to ASL interpreters, as a reasonable accommodation for Mother is denied without prejudice.

Dated: May 20, 2013

/s/
BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings