BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
VISTA UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2013070169
v.	ORDER DENYING STUDENT'S REQUEST TO EXCLUDE DISTRICT WITNESSES PRIOR TO PREHEARING CONFERENCE AND DENYING REQUEST FOR SPANISH SPEAKING ALJ
PARENT ON BEHALF OF STUDENT.	

On September 16, 2013, Parent filed a request for continuance, which was translated into English on September 18, 2013.[1] The District filed a notice of non-opposition to the continuance on September 20, and OAH issued granted Parent's request for continuance on September 20, 2013. On September 25, 2013, OAH sent Parent a Spanish translation of the continuance order and rescheduled dates for mediation, prehearing conference and due process hearing on this matter. On September 23, 2013, OAH provided Parent with a Spanish translation of the District's Pre-hearing Conference Statement, which had been filed on September 19, 2013.

On September 25, 2013, Parent filed what purports to be an opposition to modification of the District's due process request, although the document also makes two additional requests. On September 27, 2013, Parent filed a request for a Spanish speaking ALJ for the mediation and due process hearing. An English translation of this document was filed on October 9, 2010. No response or opposition has been received from the District to this request. Each of Parent's requests shall be separately ruled on in this Order as follows:

1. *Parent's Opposition to the District's modification of its request for due process:*

Parent contends that he has not been provided a Spanish translation of the District's Pre-hearing Conference (PHC) Statement. OAH records reflect an executed Proof of Service, declaring that a Spanish language translation of the District's PHC Statement was sent to Parent on September 23, 2013. It is uncertain how Parent could prepare an opposition to the PHC statement without having first received it; however, OAH shall send Parent another copy of the Spanish translation of the District's PHC Statement with this Order.

[1] Parent is Spanish speaking, and submits all documents in the Spanish language. OAH, therefore, provides a translation of all documents filed in this matter from English into Spanish and Spanish into English.

Parent contends that the District has added or changed the original issue presented in its request for due process hearing. Parent cites the amended issue as "The District offered Student a FAPE in the least restrictive environment in the IEP dated March 6, 2013, and its modifications of March 13, March 18, April 10, May 13, and May 28." Having reviewed both the District's initial filing for due process hearing and the District's PHC Statement in this matter, this ALJ finds that the District's issue as cited in Parent's opposition is EXACTLY as stated in the District's request for due process hearing and PHC Statement. There is no discrepancy between statements of the issue. Therefore Parent's requests or opposition to the District's statement of issue is denied.

The basic prerequisites of admissibility are relevance, materiality, and competence. Thus, in general, evidence is admissible, if the evidence is shown to be relevant, material, and competent, and is not barred by an exclusionary rule. (Evid. Code, § 351; Fed. Rules Evid. 402.)

Government Code section 11513, subsection (c), mandates the admission of any relevant evidence, if it is the sort of evidence on which responsible persons are accustomed to rely upon in the conduct of serious affairs. While the scope of admissible evidence is quite broad in administrative hearings, the ALJ must ensure only relevant evidence is admitted during hearing, therefore, the ALJ has discretion to exclude any otherwise relevant evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time or create substantial danger of undue prejudice, or confusing the issues. (Evid. Code, § 352; Gov. Code, § 11513 (f).)

Parent requests that documents and witnesses connected to Student's November 2012 IEP should be excluded from the due process hearing regarding Student's 2013 IEP. Parent further contends that these documents and witnesses have nothing to do with the current issue of the 2013 IEP. At this juncture, Parent's objection is premature. The District has the burden of proof in this matter, and may introduce testimony of witnesses and documents which tend to support or prove its contentions regarding the validity of the 2013 IEP. The exhibits and witnesses listed by the District are intended to give Student notice of who or what it may introduce at hearing which can provide relevant and material evidence in support of its position. Student must do exactly the same thing. The 2012 assessments and IEP, *may* be relevant to Student's progress and the creation of Student's 2013 IEP. Some of the documents and witnesses may be irrelevant, immaterial, or cumulative, which *may* result in their exclusion from the hearing record. In any event, Student's objection can be more properly raised at the PHC hearing or during the hearing itself. Therefore, Parent's request for exclusion of documents and witnesses is denied without prejudice at this time.

2. *Parent's Request for Spanish Speaking ALJ:*

Parent's second request indicates that Parent is Spanish speaking and requests that a specific ALJ, known to be fluent in Spanish, be reassigned to the mediation and due process hearing in this matter. Parent is clearly requesting a Spanish speaking ALJ for hearing. In

support of this request, Parent contends that the translation services previously provided by OAH were unacceptable, as the Interpreter was distracted and would only translate a few things correctly.

Every written proceeding in a court of justice in this state shall be in the English language, and judicial proceedings shall be conducted, preserved, and publish in no other. (Code Civ. Proc., § 185, subd. (a).) This has been applied to administrative law proceedings under Government Code, section 11435.20, subsection (a), which requires administrative law hearings to be conducted in English. Further, OAH is required to provide language assistance in the form of oral interpretation and/or written translation of English into another language for a party or witness who cannot speak or understand English or who can do so only with difficulty. (Gov. Code, § 11435.05 and 11435.20.)

Administrative hearings must be conducted in the English language and the statutory requirements qualifying an ALJ to hear a special education due process hearing do not require the ALJ to speak a party's preferred or native language. OAH has only an obligation to provide interpreter services for Parent, translating oral language and written documents from English into Spanish and Spanish into English. OAH is not required to provide a Spanish speaking ALJ for hearing, therefore Parents request for such is denied.

IT IS SO ORDERED.

ORDER

1. All of Parent's requested relief is denied;

2. All hearing dates previously set in this matter will remain on calendar; and

3. OAH is directed to send Parent a copy of the Spanish translation of the District's PHC Statement concurrent with issuing this order.

Dated: October 17, 2013

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings