BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: SONOMA VALLEY UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2019020117 ORDER FOLLOWING PREHEARING CONFERENCE

On February 22, 2019, a telephonic prehearing conference was held before Administrative Law Judge Rebecca Freie, Office of Administrative Hearings. Carl Corbin, Attorney at Law, appeared on behalf of Sonoma Valley Unified School District. Student did not appear.[1] The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

1. Hearing Dates, Times, and Location. On February 19, 2019, Sonoma filed a request to continue this matter from the original hearing dates of March 5, 6, and 7, 2019, due to a scheduling conflict on his calendar. The request was to continue the hearing to March 26, 27, and 28, 2019. Additional reasons to demonstrate good cause for continuing the hearing to these dates was established on the record by Sonoma's attorney. Accordingly, the hearing was continued, and shall take place on March 26, 27, and 28, 2019, and continue day to day at the discretion of the ALJ. The hearing shall take place at Sonoma's offices located at 17850 Railroad Avenue, Sonoma, California 94576. 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.

As ordered in the scheduling order, Sonoma is to provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the

[1] Student did not file a PHC statement. Before the PHC began, the ALJ called Mother's cellphone number. According to Sonoma's attorney, and the request for due process, Mother is the parent most involved in Student's special education placement and services. Mother answered the cellphone, but then hung up on the ALJ. The next call went into Mother's voicemail. The ALJ left a message which included the name and telephone number of the case manager in this matter, and Mother subsequently called him, but did not want the PHC reconvened so she could participate. .

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. Sonoma has failed to certify that it will provide a facility for this case that complies with the law. Sonoma shall file the necessary certification with OAH within two business days of the date of the PHC.

Prior to the beginning of the hearing, District shall ensure that the hearing room is configured into a courtroom setting and shall have at a minimum (1) a table for Student and his representatives; (2) a table for Sonoma's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. Sonoma shall provide drinking water and tissue to all parties, witnesses and the ALJ. The same hearing room shall be used for each day of hearing and shall be available at least one hour prior to the commencement of the hearing each day. The hearing room shall be locked following the hearing each night, and at lunch if no one is in the hearing room. Sonoma shall ensure that the hearing room and access to it are in compliance with the Americans with Disabilities Act.

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 purpose of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date, or properly subpoenaed, as applicable.

If Student wishes to participate in the hearing, he shall file a PHC statement with OAH no later than March 19, 2019, providing the names of the witnesses he wishes to call, and shall also provide Sonoma with copies of the exhibits he wishes to present at hearing. **Student is encouraged to access OAH's online resource called Self-Help for Special Education Cases for important information and instructions concerning special education due process at:**

https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help

2. Issue and Proposed Resolution. The issue at the due process hearing, and the proposed resolution, are listed below.

Issue

Were Sonoma's psychoeducational and academic assessments concerning Student, which were reviewed at individualized education program team meetings on October 4, 2018, and November 29, 2018, legally compliant such that Student is not entitled to independent educational evaluations funded by Sonoma?

Proposed Resolution

Sonoma asks for an order from OAH that finds its psychoeducational and academic assessments completed and reviewed at IEP team meetings in the fall of 2018, were legally compliant, such that Student is not entitled to any independent educational evaluations funded by Sonoma.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. Each exhibit shall be separated from the next by tabbed and numbered index pages. 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 exhibit binders shall be consecutively paginated or Bates-stamped. 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 the 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.

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.

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. This means that if Student wishes to have a Sonoma employee testify, Sonoma must make that witness available, and the witness need not be subpoenaed. 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 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 attempt to reach agreement on a witness list for the first day of hearing. The Sonoma shall have witnesses available in case agreement on a witness list is not reached. Prior to the commencement of the due process hearing, 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, and the ALJ will finalize the witness schedule. Additionally, the parties shall be prepared at the end of each day of hearing to discuss the witnesses to be presented the next day and the time the testimony of each such witness is expected to take.

5. Scope of Witness Examination. Each witness shall be called to testify only once, except for rebuttal purposes, and all parties shall examine the witness on all issues when the witness is first called. After the first direct and cross-examinations, each party shall be limited in examining the witness only as to those matters raised in the immediately preceding examination. The order in which the parties present their cases in chief shall be subordinate to the need for each witness to appear only once.

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. No witness will be heard by telephone unless all these requirements have been fulfilled. Sonoma does not anticipate any witness testifying telephonically.

7. Electronic Recording of Hearing.

a. Audio Recording. Sonoma may make an audio recording of the hearing subject to the following conditions: 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 recorder, in order to avoid recording conversations while off the record; 3) that operation of the party's recording mechanism will not be allowed to delay the hearing; 4) that a party shall take the recorder with him or her when leaving the hearing room; and 5) that the recording of a witness's testimony shall not be played for other witnesses. If Student desires to make such a recording, he shall notify the ALJ and the same conditions shall apply.

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

8. Order of Presentation of Evidence. In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) Here, Sonoma is the petitioning party and bears the burden of proof. Accordingly, Sonoma shall present its case-in-chief, followed by Student..

9. Motions. No pretrial motions are pending or contemplated. 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 three business days prior to the PHC of February 22, 2019.

10. Compensatory Education/Reimbursement. Any party seeking reimbursement of expenditures shall present admissible evidence of these expenditures, or a stipulation to

the amount of expenditures, as part of its case in chief. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

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

12. 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, pagers, recorders, 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.

13. Special Needs and Accommodations. Neither party or witnesses require a foreign language interpreter, nor is it believed that any witness or party requires any reasonable accommodations.

A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the mediation or hearing may contact the assigned calendar staff, identified in the scheduling order, at (916) 263-0880, as soon as the need is known. 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

14. The Hearing Will be Closed to the Public. The hearing will be closed to the public unless Student requests it be open.

15. 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 EMAIL THE SIGNATURE PAGE OF THE SIGNED AGREEMENT AND A LETTER WITHDRAWING THE CASE TO THE OAH AT:

https://www.applications.dgsapps.dgs.ca.gov/oah/oahsftweb .

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 leaving to attend the hearing.

16. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: February 25, 2019

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings