

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT (FATHER) ON BEHALF OF
STUDENT,

v.

SPENCER VALLEY ELEMENTARY
SCHOOL DISTRICT,

OAH Case No. 2014110312

SPENCER VALLEY ELEMENTARY
SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH Case No. 2014100761

Amended Order Following Prehearing
Conference

On December 22, 2014, a telephonic prehearing conference was held before Administrative Law Judge Robert Helfand, Office of Administrative Hearings. Patricia Lewis, Attorney at Law, appeared on behalf of Student's father (Father). Deborah R.G. Cesario, Attorney at Law, appeared on behalf of Spencer Valley Elementary District. Ms. Cesario's law clerk, Jimmy Sanft, also attended. Student's mother did not attend.¹ The PHC was recorded.

Based on discussion of the parties, the ALJ issues the following order:

1. Hearing Dates, Times, and Location. The hearing is scheduled to commence on December 30, 2014. Witnesses are not available at that time. The parties jointly requested that the hearing be continued. Because a Family Court hearing on a dispute between Student's parents as to educational rights is scheduled to be held on January 30, 2015, the parties requested that the hearing be continued to a date following that hearing. Good cause demonstrated, the joint request is granted.

¹ The ALJ attempted to contact Student's mother by telephone prior to the PHC and was unsuccessful.

Accordingly, the currently scheduled hearing dates are vacated. This matter will be set as follows:

Mediation:	January 20, 2015 at 9:30 a.m. at the offices of Spencer Valley
Prehearing Conference:	February 6, 2015, at 1:00 p.m.
Due Process Hearing:	February 10, 11, 12, 17, and 18, 2015, starting at 9:30 a.m. on August 12, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

The hearing shall take place at the OAH San Diego office, located at 1350 Front Street, Suite 3005, San Diego, CA 92101.

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.

2. Issues and Proposed Resolutions. The issues at the due process hearing are listed below:

Student’s Issue

a) Did Spencer Valley deny Student’s father the ability to meaningfully participate in the Individualized Education Program decision-making process by:

- (1) Failing to provide Father evidence of Student’s eligibility for special education under autism;
- (2) Failing to obtain Father’s consent to Vista Hill provided services;
- (3) Holding an informal meeting between Mother and the District IEP team members on September 19, 2013 so as to evaded IEP requirements;
- (4) Failing to provide Father with report cards and progress reports;
- (5) Failing to provide Father an audio recording or signature page of the January 14, 2014 IEP;
- (6) Failing to provide Student’s education records to Father, including discipline corrections, informal meeting notes, emails between parents and school, parental refusals of consent to evaluations, and Vista Hill records; and
- (7) Holding an IEP meeting on March 11, 2014 without Father?

District's Issues

b) Was the 2013 Triennial Assessment and Report appropriately conducted such that Student is not entitled to an Independent Education Evaluation at public expense?

c) Did the January 24, 2014 IEP, as amended on June 4, 2014, provide Student with a free appropriate public education in the least restrictive environment?

Student's proposed resolution for Issue (a) is that Student's father be awarded compensatory education in the amount of \$100.00 per instructional day for a total of \$28,000.00.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. 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 exhibits shall be Bates-stamped. Each exhibit binder shall contain a detailed table of contents. The parties represent that they have served 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 included in the exhibit lists and not previously exchanged shall not be admitted into evidence at the hearing unless it is supported by written declaration under penalty of perjury, and the ALJ rules that it is admissible.

The parties shall meet and confer no later than February 5, 2015 to eliminate any duplicate exhibits.

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. 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 disclosed in the party's prehearing conference statement except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

The parties are ordered to meet and confer by noon on February 5, 2015, as to the schedule of witnesses. The parties shall attempt to reach agreement on a witness list for the first day of hearing. The parties have agreed to coordinate the availability and order of testimony of witnesses to ensure that there is a witness available to testify at all times during the hearing, and to ensure that the hearing is completed as scheduled. The parties shall

submit to OAH at the first day of hearing a list of actual witnesses to be called and the anticipated time for needed to complete each witness's testimony.

The following witnesses will be called to testify by Student's father:[Redacted]

The following witnesses will be called to testify by Spencer Valley: [Redacted]

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.

5. Scope of Witness Examination. After the first direct and cross-examinations, each party shall be limited in examining the witness to only those matters raised in the immediately preceding examination.

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, unless the opposing party has stipulated that the witness may appear by telephone. 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.

7. Timely Disclosure of Witnesses/Exhibits. The parties are scheduled to exchange exhibits no later than December 24, 2014.

8. Order of Presentation of Evidence. This matter is consolidated, and involves three parties. Spencer Valley will present its case first.

9. Motions. Spencer Valley has made a motion for the ALJ to take official notice of OAH Cases Numbers 2012020570 and 2014040274, which is granted.

Parties may file prehearing motions prior to the next Prehearing Conference but no later than February 4, 2015.

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

11. 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.

12. 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.

13. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for translation services.

A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk at (916) 263-0880, or the OAH ADA Coordinator at OAHADA@dgs.ca.gov or (916) 263-0880 as soon as the need is made known. Additional information concerning requests for reasonable accommodation is available on OAH's website at <http://www.dgs.ca.gov/oah/Home/Accommodations.aspx>.

14. Hearing Closed To the Public.

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 FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT THE FAXINATION LINE at 916-376-6319.

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 the evening prior to the hearing or the morning of the hearing.

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

IT IS SO ORDERED.

DATE: December 26, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings