BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. LAS VIRGENES UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2013080387
LAS VIRGENES UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH CASE NO. 2013071203 PREHEARING CONFERENCE ORDER

On October 18, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Elsa H. Jones, Office of Administrative Hearings (OAH). Jane DuBovy, Attorney at Law, and Carolina Watts, educational advocate, both of A2Z Educational Advocates , appeared on behalf of Parents and Student (collectively, Student). Wesley B. Parsons and Siobhan H. Cullen, Attorneys at Law, of Fagen Friedman & Fulfrost, LLP, appeared on behalf of the Las Virgenes Unified School Distract (District). The PHC was recorded.

Based on discussion with the parties, the ALJ issues the following Order:

1. Hearing Dates, Times, and Location. The assigned hearing ALJ is June Lehrman. The hearing shall take place on October 28-31, 2013, and November 4-6 ,2013, and shall continue day to day, Monday through Thursday as needed at the discretion of the hearing ALJ, except not on November 7, 2013. The hearing shall commence at 1:30 p.m. on October 28, 2013, and on November 4, 2013. On all other hearing days, the hearing shall commence at 9:30 a.m., unless otherwise ordered. The hearing shall take place at the District's offices located at 4111 N. Las Virgenes Road, Calabasas, CA 91302.

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 was not properly notified of the hearing date or properly subpoenaed, as applicable.

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

A. Student's Issues

(1) Whether the District denied Student a free appropriate public education (FAPE) by impeding Parents' participation in the development of Student's Individualized Education Program (IEP) by: (a) Failing to take into consideration Parents' concerns in developing Student's April 9, 2013 IEP; and (b) Predetermining that it would not offer Student placement at Village Glen nonpublic school (NPS) for the 2013-2014 school year but would only offer its own program.

(2) Whether the District failed to conduct appropriate assessments in 2013 in the areas of (a) Occupational Therapy (OT), (b) Speech and Language (LAS), and (c) Psychoeducational, in that the assessments were not sufficiently comprehensive to identify all of Student's unique needs and did not include a variety of measures to assess in all areas of need.

(3) Whether the April 9, 2013, IEP deprived Student of a FAPE by: (a) Failing to offer sufficient and appropriate annual goals in all areas of need with respect to (i) sensory processing and modulation; (ii) communication and language; and (iii) behavior; (b) Failing to offer sufficient and appropriate OT services; (c) Failing to offer appropriate behavior services, including failing to develop an appropriate positive behavior support plan (BSP); and (d) Failing to offer an appropriate placement in an appropriate NPS to meet Student's needs in the areas of academic, cognition, behavior, social skills, language and communication, and sensory processing.

B. District's Issues

(1) Whether the District's 2013 assessments in the areas of (a) psychoeducational, (b) LAS, and (c) OT were appropriate such that Student is not entitled to independent educational evaluations (IEE's) at public expense.

(2) Whether the April 9, 2013, IEP offered Student a FAPE in the least restrictive environment (LRE).

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 whether 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 have stipulated that they will file their final exhibit lists, and serve their final exhibit lists and exhibit binders on each other by no later than the close of business on October 22, 2013. 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.

Unless used solely for rebuttal or impeachment, any exhibit not included in a party's final exhibit list and not previously exchanged shall not be admitted into evidence at the hearing at the request of that party, except for good cause shown, and at the discretion of the ALJ, and unless the ALJ rules that it is admissible.

4. Witnesses. The parties have stipulated that, by no later than close of business on October 22, 2013, they will file with OAH and serve on each other their final witness lists. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available, without need for subpoena. 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 final witness list, except for good cause shown, and at the discretion of the ALJ.

The parties will 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 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 ALJ has discretion to limit the number of witnesses and to set the length of time allowed for testimony. Parties should anticipate that witnesses who are listed on both parties' witness lists will only be permitted to be called to testify once. Furthermore, the ALJ has discretion to limit the number of witnesses who testify and the time allowed for testimony

The parties shall attempt to reach agreement on a witness list for the first day of hearing. The District shall have witnesses available in case agreement on a witness list is not reached. The parties shall be prepared during 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. 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, at the discretion of the presiding ALJ.

6. Order of Presentation of Evidence. This matter is consolidated, and involves two parties. The order of presentation of evidence shall be as follows: Student is to present his case-in-chief first.

7. Motions. On October 15, 2013, the parties filed a stipulated motion (Motion) to allow the District to amend its due process complaint and to maintain the scheduled hearing dates. The Motion is granted. Additionally, in his PHC Statement, Student requested leave to audiotape the due process hearing. In its PHC Statement, District requested that it be permitted to audiotape the due process hearing should Student be allowed to do so. These requests were deferred and shall be ruled upon by the hearing ALJ.

Any additional prehearing motion filed shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not made prior to or during the PHC of October 18, 2013.

8. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted in writing to the hearing ALJ.

9. 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 placed on the vibrate setting during the hearing unless permission to the contrary is obtained from the ALJ. There shall be no texting during the hearing, unless permission to the contrary is obtained from the ALJ.

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

12. 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 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 hearing ALJ. The hearing ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

13. Failure to comply with this Order, or with the applicable provisions of Evidence Code section 56505, subdivision (e)(7), may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

Dated: October 22, 2013

/s/

ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings