BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CALIFORNIA VIRTUAL ACADEMIES AND SPENCER VALLEY ELEMENTARY SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2015080474 ORDER FOLLOWING PREHEARING CONFERENCE; GRANTING JOINT REQUEST FOR CHANGE OF VENUE

On August 31, 2015, a telephonic prehearing conference was held before Administrative Law Judge Paul H. Kamoroff, Office of Administrative Hearings. Karin Anderson, Attorney at Law, appeared on behalf of the Spencer Valley Elementary School District. Megan Moore, Attorney at Law, appeared on behalf of the California Virtual Academies. Student's father appeared on behalf of Student. The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on September 8, 9, and 10, 2015, and continuing day by day thereafter, Monday through Thursday, at the discretion of the ALJ. The hearing shall begin at 9:30 a.m. on the first day, and at 9:00 a.m. on each subsequent day, unless otherwise ordered. The hearing shall take place on September 8 and 9, 2015, at the California Tower Building, 3737 Main Street, Alvarado Room #207, Riverside, CA 92501, and a venue to be determined for each subsequent day.

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

Whether California Virtual Academies and District's triennial assessment of Student, including the psychoeducational, occupational therapy, speech and language, and assistive

technology evaluations, were lawfully administered, such that Parents are not entitled to an independent educational evaluation at public expense?

To remedy California Virtual Academies and District's issue, they seek an order that they prevailed in this matter.

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 California Virtual Academies and District joint exhibit (for example, "S-5, S-6," or "D-1, D-2"). Each exhibit shall 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 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.

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. No 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 the close of business on September 2, 2015, regarding scheduling witness testimony. 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. California Virtual Academies and District shall have witnesses available in case agreement on a witness list is not reached. 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. 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. No party requested telephonic testimony.

7. 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, California Virtual Academies and District are the petitioning parties. Accordingly, California Virtual Academies and District shall present, jointly, its case-in-chief, followed by Student. If a witness is to be called by more than one party, each party shall ask questions of the witness so that the witness does not need to return for testimony.

8. Motions. At the beginning of the PHC, the parties jointly requested a change of venue based upon District's inability to locate an available space at District's office. Student requested that the hearing take place at the California Tower Building in Riverside, CA. California Virtual Academy and District did not oppose this request.

The place for conducting a due process hearing must be reasonably convenient to the parents and pupil involved the proceeding. California Education Code section 56505, subdivision (b), directs the place for a due process hearing and provides that the "hearing shall be held at a time and place reasonably convenient to the parent or guardian and the pupil."

Here, Student's requested hearing venue, located at 3737 Main Street, Alvarado Room #207, Riverside, CA 92501, is reasonably convenient to Parents and the witnesses in this matter. Therefore, the parties' joint request for the change in hearing venue is granted.

Student contemplates submitting a motion to add parties and to continue the hearing. No additional pretrial motions are pending or contemplated. Any motion filed after this date, other than Student's motion to add parties and to continue the hearing, shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not made prior to or during the prehearing conference of August 31, 2015.

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

10. 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.

11. Special Needs and Accommodations. At present, neither party anticipates requiring any special needs or accommodations for this hearing.

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, the OAH ADA Coordinator at OAHADA@dgs.ca.gov or (916)263-0880 as soon the need is made known. Additional information concerning requests for reasonable accommodations is available on OAH's website at htp.www.dgs.ca.gov/oah/Home/Accomodations.aspx.

12. Hearing Open to the Public. At the request of Student's parents, the hearing will be open to the public.

13. 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.

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

IT IS SO ORDERED.

DATE: September 1, 2015

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings