BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. ANTELOPE VALLEY UNION HIGH SCHOOL DISTRICT AND SNOWLINE JOINT UNIFIED SCHOOL DISTRICT,	OAH Case No. 2017040093
SNOWLINE JOINT UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017070529 ORDER FOLLOWING EXPEDITED PREHEARING CONFERENCE

On August 7, 2017, a telephonic prehearing conference was held before Administrative Law Judge Kara Hatfield, Office of Administrative Hearings. Punam Grewal and Michelle Powers, Attorneys at Law, appeared on behalf of Student. Vivian Billups, Attorney at Law, appeared on behalf of Snowline Joint Unified School District. Antelope Valley Union High School District is not a party to the expedited case and did not participate in the PHC. The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The expedited hearing shall take place on August 15, 16, and 17, 2017, and continuing day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at the Snowline's offices located at 4075 Nielson Road, Phelan, California, 92329. 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, Snowline shall 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 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. Snowline certified that the facilities used for this case comply with the law.

Snowline shall inform OAH within two days of the date of this order if it is unable to comply with this order.

Prior to the beginning of the hearing, Snowline 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 Snowline's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. Snowline 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. Snowline 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 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 expedited due process hearing and the proposed resolutions, as pleaded in Student's Third Amended Complaint and clarified during the PHC, are listed below.[1]

Did Snowline violate Student's rights under title 20 United States Code section 1415(k) and related parts of 34 Code of Federal Regulations by:

1) failing to provide Parent notice of the March 22, 2017 manifestation determination review;

2) denying Parent participation in the March 22, 2017 manifestation determination review;

3) failing to provide Parent notice of his procedural rights and safeguards for the March 22, 2017 manifestation determination review;

4) failing to review Student's school records for the March 22, 2017 manifestation determination review;

5) failing to conduct a functional behavior assessment before selecting Eagle Summit Community Day School as the interim alternative educational setting at the March 22, 2017 manifestation determination review;

[1] Student withdrew the issue stated in the Third Amended Complaint contending Snowline removed Student from his placement for more than 10 days without holding an IEP team meeting or a manifestation determination review.

6) failing to conclude Student's conduct on March 8, 2017, was caused by or had a direct and substantial relationship to Student's disability;[2]

7) failing to remedy Snowline's failure to implement Student's individualized education program pursuant to 34 Code of Federal Regulations part 300.530(e)(3);

8) failing to select an appropriate interim alternative educational setting, specifically a nonpublic school or residential treatment center; and

9) failing to implement Student's April 21, 2016 individualized education program in the interim alternative educational setting?

Student seeks immediate placement in a residential treatment center or another appropriate therapeutic interim placement to ensure Student's safety and the safety of others, where he can receive educationally-related mental health counseling and a full-time designated academic and behavioral aide; independent educational evaluations at public expense in all areas of known and suspected disability with providers of Parent's choosing; compensatory education services provided on a one-on-one basis by qualified providers from a non-public agency who are trained and experienced to address Student's unique needs; reimbursement for all educationally-related expenses incurred during the statutory period; a complete copy of Student's records; payment for Parent's advocate to attend IEP meetings; training for Snowline's staff and employees in the areas of substantive, procedural, and legal compliance; and the appointment of an ombudsman to monitor and ensure implementation of any and all current and future IEPs.

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 Snowline exhibit (for example, "S-5, S-6, or D-1, D-2"). At the non-expedited hearing, Antelope Valley will be assigned the letter "A" for its exhibits. 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 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.

[2] Student does not dispute Snowline's conclusion that Student's conduct on March 8, 2017, was the direct result of Snowline's failure to implement Student's individualized education program and therefore was a manifestation of his disability. Student also does not dispute Snowline's conclusion that Student's conduct on March 8, 2017, caused serious bodily injury to another student.

The parties shall meet and confer by no later than **5:00 p.m. on August 11, 2017**, to discuss exhibits and eliminate duplicate exhibits from the exhibit binders.

The parties shall exchange resumes or curriculum vitae for each witness who is expected to testify as to their professional credentials. Notwithstanding the requirements of Education Code section 56505, subdivision (e)(7), the parties shall exchange resumes not later than 24 hours before the witness is scheduled to testify.

Each exhibit shall consist of one document; separate documents may not be combined into one exhibit. Excerpts of an audio record of an individualized education program team meeting, if any, should be transcribed and offered as documentary evidence; that portion of the audio record transcribed shall be provided to the opposing party with the transcript to allow an opportunity to verify the accuracy of the transcription. Transcription need not be done by a certified court reporter.

Snowline shall include as part of its exhibits the school calendar(s) for the years at issue.

If the parties intend to rely on individualized education programs, the parties shall attach all pages of the IEP(s), including copies of all actual signatures on the IEP(s) and any typewritten or handwritten notes or comments, if any, written on the IEP(s).

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. 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 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 meet and confer by **5:00 p.m. on August 11, 2017,** as to the schedule of witnesses and coordinate the availability and order 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.

On the first day of hearing before the first witness testifies, the parties shall provide the ALJ with one **joint** detailed hour-by-hour schedule of all witnesses expected to testify at hearing, which list shall also include an estimate of time for each party's direct and cross-examination.

Each witness will only be called once to testify, except for rebuttal purposes, and all parties shall examine the witness when the witness is first called. Snowline 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 each 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 to only 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, 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. Unless otherwise ordered, the witness shall testify from a private room using a landline telephone. No witness will be heard by telephone unless all these requirements have been fulfilled.

Student's oral motion to allow Sara Plyly to testify telephonically is denied without prejudice to renewing the motion, in writing, supported by competent evidence demonstrating the burden to Student and Ms. Plyly to have Ms. Plyly appear at the due process hearing in Phelan, California. Ms. Plyly was not on Student's witness list and was orally announced during the PHC. Any written motion will be ruled on at the beginning of the due process hearing. District will have the opportunity to submit a written response to any motion or make oral argument at the beginning of the due process hearing.

7. Electronic Recording of Hearing.

a. Audio Recording. District's motion to audio record the hearing is granted, subject to the following conditions, which shall be applicable to both parties: Only the parties' attorneys may audio record the hearing, and they shall only audio record when the hearing is on the record. Only the ALJ's recording shall be deemed the official transcript of the hearing, unless otherwise ordered. The audio recording may only be used by the attorneys, may not be shared with others, may not be played to any witness, and may not be

published or disseminated in any form or by any means. The hearing will not be stopped or delayed at any time to accommodate the recordings or any problems with the recording equipment.

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, Student is the petitioning party. Accordingly, Student shall present his case-in-chief, followed by Snowline.

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 prior to or during the prehearing conference of August 7, 2017.

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 anticipates the need for accommodations or interpreter services.

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/Home/Accessibility.aspx.

14. Hearing Open/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 FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO 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.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement as noted above, the parties shall submit a request for a status conference and provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

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

IT IS SO ORDERED.

DATE: August 8, 2017

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Kara Hatfield
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KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings