BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LAS VIRGENES UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013110490 ORDER FOLLOWING PRE-HEARING CONFERENCE

On January 10, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Alexa J. Hohensee, Office of Administrative Hearings (OAH). Student's mother and father appeared on behalf of Student. Wesley B. Parsons and Siobhan H. Cullen, attorneys at law, appeared on behalf of the Las Virgenes Unified School District (District). The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The shall take place on January 22, 23 and 27, 2014, and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin each day at 9:00 a.m. and end at 5:00 p.m., except for January 27, 2014 on which day the hearing will start at 1:30 p.m., unless otherwise ordered.

The hearing shall take place at the District's offices located at 4111 North Las Virgenes Road, Calabasas, California 9102.

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.

(1) Whether the District denied Student a free appropriate public education (FAPE) by:

(a) Providing Student with a District aide, rather than a nonpublic agency (NPA) aide, in the classroom;

(b) Failing to provide Student with an aide in the classroom on a daily basis for the duration of time specified in Student's IEP's;

(c) Failing to have an aide review homework assignments with Student to confirm understanding;

(d) Failing to provide Student with appropriate speech therapy services;

(e) Failing to offer Student placement in the least restrictive environment.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders and tabbed 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 shall serve their evidence binders on each other in compliance with Education Code section 56505, subdivision (e)(7), which provides for disclosure of witnesses and exhibits "at least" five business days prior to the hearing. 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. (Each party will have prepared four copies of the evidence binder: for itself, to serve on the other party, for the ALJ and for the 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.

The parties shall meet and confer to delete 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, subd. (e)(7), the parties shall exchange resumes not later than 48 hours before the witness is scheduled to testify.

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 ordered to meet and confer by January 15, 2014, as to the schedule of witnesses. The parties shall provide the ALJ with a detailed schedule which shall include an estimate of time for each side's direct and cross examination. Each witness will only be called once to testify, except for rebuttal purposes, and both parties shall examine the witness when the witness is first called. The 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 each witness is expected to take.

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 who testify and the time allowed for witnesses' testimony.

5. Scope of Witness Examination. If a witness is to be called by more than one party, each party shall complete its direct questioning of that witness the first time the witness is called. If a party's witness is called first by an opposing party, direct questioning will be completed at the same time as cross-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. Order of Presentation of Evidence. In an administrative due process hearing, 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 and therefore shall have the burden of proof as to his issues, and shall present his witnesses for examination first.

8. 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 PHC of January 10, 2014.

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 the need for special accommodation for any witness or party, or for interpretation services.

12. Hearing Closed To the Public. The hearing will be closed to the public unless Student's parents request otherwise.

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.

Dated: January 10, 2014

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings