

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2012080122
v.	
ANTELOPE VALLEY UNION HIGH SCHOOL DISTRICT.	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2012090246
v.	
ANTELOPE VALLEY UNION HIGH SCHOOL DISTRICT.	PREHEARING CONFERENCE ORDER

On January 7, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Elsa H. Jones Office of Administrative Hearings (OAH). Daniel Carlson, Student's father (Parent), appeared on behalf of himself and Student. Bridget L. Cook, Attorney at Law, appeared on behalf of the Antelope Valley Union High School District (District). The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on January 15-17, 2013, and January 22, 2013, and continue day to day, Monday through Thursday as needed at the discretion of the ALJ. Unless otherwise ordered, the hearing shall begin each day at 9:30 a.m., with the exception of January 16, 2013, at which time the hearing shall begin at 1:00 p.m.

The hearing shall take place at the District's offices located at 44811 Sierra Highway, Lancaster, California 93534.

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. Upon reasonable notice, each party shall make witnesses under its control reasonably available to the other party for hearing, without need for a subpoena. 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: The issues to be decided at the due process hearing are:

a) Whether District denied Student a free appropriate public education (FAPE) by enrolling her in multiple District schools from August 3, 2010, through September 13, 2010, without consulting with her parents.

b) Whether District denied Student a FAPE from September 7, 2010, through May 6, 2011, by failing to implement the level of supervision set forth in Student’s individualized education programs (IEP’s) of February 14, 2010, and October 4, 2010.

c) Whether District denied Student a FAPE by failing to provide Student with counseling services two times a month through May 6, 2011, as set forth in her IEP of October 4, 2010.

d) Whether District denied Student a FAPE in September 2010, by discontinuing the bus transportation set forth in Student’s February 25, 2010, IEP.

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”). It is preferred that each exhibit be internally paginated by exhibit, or all of a party’s exhibits shall be consecutively numbered by means of Bates stamp or other similar method. 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 shall 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 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 otherwise admissible evidence.

4. Witnesses. Each party shall serve their final witness lists upon each other, and file them with OAH, in accordance with Education Code section 56505, subdivision (e)(7). Each party is responsible for procuring the attendance at hearing of its own witnesses. 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 shall attempt to reach agreement on a witness list for the first day of hearing. During the hearing, the parties shall keep the ALJ and each other apprised of the witness schedule. The ALJ has discretion to limit the number of witnesses and set the length of time allowed for testimony. The parties are encouraged to review and curtail 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. Parties should anticipate that witnesses who are listed on both parties' witness lists will only be permitted to be called to testify once.

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 ALJ.

6. Motions. No prehearing motions are pending or contemplated. Any motion filed after January 7, 2013, 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 7, 2013.

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

8. Conduct of Counsel and Parties, 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 or tweeting while the hearing is in session, unless permission to the contrary is obtained from the ALJ.

9. 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.

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

11. Settlement. The parties are encouraged to continue working together to reach a settlement 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 (5) 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 settlement 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.

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

IT IS SO ORDERED.

Dated: January 11, 2013

/s/

ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings