

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

VAL VERDE UNIFIED SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH Case No. 2014110063

ORDER FOLLOWING PREHEARING
CONFERENCE

On February 6, 2015, a telephonic prehearing conference was held before Administrative Law Judge Susan Ruff, Office of Administrative Hearings. Constance Taylor, Attorney at Law, appeared on behalf of Val Verde Unified School District. Peter Attwood, educational advocate, appeared on behalf of Student and Student's parents. 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 begin at 9:30 a.m. on February 18, 2015, shall continue at 9:00 a.m. on February 19, 2015, and shall continue day to day thereafter, Monday through Thursday, as needed at the discretion of the ALJ.

The hearing shall take place at:

**Val Verde Unified School District
975 W. Morgan Street
Perris, CA 92571**

The school district 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), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.

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. The issue for hearing is as follows: Were the assessments which resulted in District's October 8, 2014 multidisciplinary psycho-educational report conducted appropriately, such that District is not obligated to fund any parent-requested independent educational evaluations?

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 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 consecutively paginated, for example by Bates-stamping. Each exhibit binder shall contain a detailed table of contents. 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.

Student's PHC Statement did not include a proper list of documentary evidence as required by the OAH Scheduling Order dated November 4, 2014. Student will provide District's counsel with such a list, specifically listing each document and not just categories of documents, by noon on Monday, February 9, 2015.

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.

5. 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. No witness will be heard by telephone unless all these requirements have been fulfilled.

Student's motion to allow four witnesses – Student's father, a family friend, Susanne Smith Roley, and Abby Rozenberg – to testify telephonically is granted. Student shall provide each telephonic witness with a complete set of exhibit binders from each party, containing all of each party's exhibits, prior to the hearing. District 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.

6. Motions. District plans to file a motion to exclude from testifying the unidentified worker from Child Protective Services mentioned on Student's witness list.

Any such motion shall be made in writing, and District's moving papers for that motion shall be filed with OAH and served on Student's educational advocate on or before February 11, 2015.

During the PHC, Student's advocate made a motion to audio record the hearing. That motion is granted on the following conditions: 1) The recording by OAH shall be the official record of the hearing; 2) The District may also audio record the hearing; 3) The audio recording(s) shall remain confidential and shall be used only for purposes of the hearing; 4) If a motion to exclude witnesses is made and granted, no portion of the audio recording shall be played to any potential witness in the case without explicit consent from the ALJ hearing the case; 5) The recording equipment shall only be running when the hearing is "on the record" and the recording equipment shall be turned off during recesses, lunch and at any other time when the case is off the record; 5) The hearing will not be stopped or delayed at any time to accommodate the recordings or any problems with the recording equipment; 6) Only audio recording will be permitted; there shall be no video recording or photography in the hearing room at any time; and 7) Only District's counsel and Student's educational advocate shall be permitted to make the recordings; no other participants or observers shall record any part of the hearing.

Any other 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.

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

8. 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, 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.

9. Special Needs and Accommodations. Student requested a Spanish language interpreter for the telephonic testimony of Student's father. At present, neither party anticipates the need for special accommodation or language interpretation for any other witness or party.

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, or the OAH ADA Coordinator at OAHADA@dgs.ca.gov or 916-263-0880 as soon as the need is made known. Additional information concerning a request for reasonable accommodation is available on OAH's website at:

<http://www.dgs.ca.gov/oah/Home/Accommodations.aspx>.

10. Hearing Open To the Public. At the request of the parent, the hearing will be open to the public.

11. 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.

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

IT IS SO ORDERED.

DATE: February 6, 2015

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings