BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. SNOWLINE JOINT UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2014090176
SNOWLINE JOINT UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2014100294 PREHEARING CONFERENCE ORDER

On December 1, 2014, a telephonic prehearing conference was held before Administrative Law Judge Elsa H. Jones, Office of Administrative Hearings. Connie Chu, Attorney at Law, appeared on behalf of Parent and Student (collectively, Student). Vivian E. Billups, Attorney at Law, appeared on behalf of Snowline Joint Unified School 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 December 8 through December 11, 2014, and continuing day to day thereafter, Monday through Thursday as needed, at the discretion of the hearing ALJ. Unless otherwise ordered, the hearing shall begin at 1:30 p.m. on December 8, and all other hearing days shall begin at 9:00 a.m.

The hearing shall take place at the District's offices located at 4075 Nielson Road, Phelan, California 92329. As was stated in the previous PHC Order in this case, dated October 20, 2014, 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 people 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 was not properly notified of the hearing date or properly subpoenaed, as applicable.

2. Issues and Proposed Resolutions. Student's issues at the due process hearing are:

A. Whether District denied Student a free appropriate public education during the 2012-2013 school year by reason of the following:

(1) Failing to find Student eligible for special education under the category of Autism;

(2) Failing to offer Student a placement in the least restrictive environment; and

(3) Failing to provide Student sufficient behavioral services and supports, specifically: (a) supports and services regarding social skills; (b) direct behavioral interventions; (c) an adequate and appropriate behavior support plan; (d) a behavioral assessment; (e) teacher coaching and training; (f) Parent coaching and training; (g) mobilizing community resources; and (h) coordinating the District's activities with non-school providers.

B. Whether District denied Student a FAPE during the 2013-2014 school year, by reason of the following:

(1) Failing to find Student eligible for special education under the category of Autism;

(2) Failing to offer Student a placement in the LRE; and

(3) Failing to provide Student sufficient behavioral services and supports, specifically: (a) supports and services regarding social skills; (b) direct behavioral interventions; (c) an adequate and appropriate behavior support plan; (d) a behavioral assessment; (e) teacher coaching and training; (f) Parent coaching and training; (g) mobilizing community resources; and (h) coordinating the District's activities with non-school providers.

C. Whether District denied Student a FAPE during the 2014-2015 school year by reason of the following:

(1) Failing to find Student eligible for special education under the category of Autism;

(2) Failing to offer Student a placement in the LRE; and

(3) Failing to provide Student sufficient behavioral services and supports, specifically: (a) supports and services regarding social skills; (b) direct behavioral interventions; (c) an adequate and appropriate behavior support plan; (d) a behavioral assessment; (e) teacher coaching and training; (f) Parent coaching and training; (g) mobilizing community resources; and (h) coordinating the District's activities with non-school providers.

District's issues at the due process hearing are:

A. Whether the IEP's of December 5, 2013, and May 13, 2014, offered Student a FAPE in the LRE;

B. Whether the IEP's of September 2, 2014 and September 29, 2014, offered Student a FAPE in the LRE.

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"). 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 represent that they have served 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.

Unless used solely for rebuttal or impeachment, any exhibit not included in a party's exhibit list and not previously timely 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.

4. Witnesses. The parties represent that they have served their final witness lists on each other in compliance with Education Code section 56505, subdivision (e)(7). Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available, without need for subpoena, upon timely notice that the opposing party desires to call such witnesses to testify. 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 coordinate the availability and order of testimony 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. The parties shall meet and confer regarding witness scheduling, and shall be prepared at the commencement of the first day of hearing to present a schedule of witnesses for the first day of hearing. During the hearing, the parties shall keep the ALJ and each other apprised of the witness schedule. The parties shall be prepared at the beginning of the hearing, as well as at all times throughout the hearing, to discuss the witnesses to be presented, the order in which they will be called, and the amount of time the testimony of each witness is expected to take.

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 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 should anticipate that, except for purposes of rebuttal or impeachment, 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, unless otherwise ordered by the ALJ.

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. District moved that all of its witnesses from Provo Canyon Residential Treatment Center, located in Provo, Utah, and from Mountain View School located in Hesperia, California, be permitted to testify by telephone. District's Second PHC Statement lists six witnesses from Provo Canyon, and District's motion asserts that the economics of having those witnesses testify in person supports allowing them to testify by telephone. District's PHC Statement also lists six witnesses from Mountain View, and asserts that Mountain View is such a small school that it would suffer hardship if those witnesses had to appear and testify in person. Student did not oppose the motion with respect to the witnesses from Provo Canyon, but nominally opposed the motion with respect to the witnesses from Mountain View.

District's witnesses from Provo Canyon shall be permitted to testify by telephone. District shall prove each such 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. Furthermore, unless otherwise ordered by the ALJ, each such witness shall testify while on a land-line telephone in a private room. No witness will be heard by telephone unless all these requirements have been fulfilled.

The ruling on District's motion with respect to the six witnesses from Mountain View is deferred until the hearing. First, these witnesses are local, and therefore the expense and

inconvenience of having them appear in person is far less than would be for the witnesses from Provo Canyon. Second, District's Second PHC Statement lists six witnesses from Mountain View, which, combined with the six witnesses from Provo Canyon, means that a large number of witnesses would potentially be testifying by telephone. This could affect the conduct and purpose of the hearing, as it is more difficult to examine witnesses by telephone, and more difficult for the ALJ to assess the credibility of a witness who testifies by telephone. Third, the subject matter of these witnesses' testimony is unclear, as is whether they will be actually called to testify. These factors should become more clear when the hearing starts. Accordingly, the ALJ will decide at hearing whether any or all of the Mountain View witnesses will be permitted to testify by telephone. If such permission is granted, District and the witnesses shall comply with the same requirements for such testimony as have been ordered with respect to the witnesses from Provo Canyon.

7. Order of Presentation of Evidence. This matter is consolidated, and involves two parties. Student shall present his case-in-chief first.

8. Motions. Besides the motion for telephonic testimony, no other pretrial motions are pending or contemplated. Any motion filed after this date, except for a challenge to an ALJ, 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 December 1, 2014.

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

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 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 during the hearing, unless permission to the contrary is obtained from the ALJ.

11. 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.

12. Special Needs and Accommodations. No special needs or accommodations have been requested. At present neither party anticipates the need for special accommodation for any witness or party, or for interpreter services. A party or participant in this matter who requires reasonable accommodation to participate in the hearing may contact the assigned calendar clerk at (916) 263-0880, or the OAH ADA Coordinator at either OAHADA@dgs.ca.gov or at (916) 263-0880 as soon as the need is made known. Additional

information concerning requests for reasonable accommodation is available on OAH's website at http://www.dgs.ca.gov/oah/Home/Accommodations.aspx.

13. Hearing Open/Closed To the Public. The hearing is closed to the public.

14. 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 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.

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

IT IS SO ORDERED.

DATE: December 3, 2014

/s/

ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings