

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

VENTURA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011080552

ORDER DENYING STUDENT'S
MOTION TO ADMIT
DOCUMENTARY EVIDENCE
(ATTENDANCE RECORD)

The eight-day due process hearing in this matter concluded on February 17, 2012. Attorney Andrea Marcus appeared on behalf of Student and attorney Melissa Hatch appeared on behalf of District.

At the conclusion of the hearing, after all witnesses had appeared and testified, Ms. Marcus requested that Administrative Law Judge (ALJ) Clifford H. Woosley admit a document, referred to as Student's Pacific High School (PCH) Attendance Record, for August 2011 to February 2012. Counsel stated the record was not in the documents exchanged with District prior to the hearing because the Attendance Record was not produced by the District until the previous week on the first day of hearing. District objected to admission of the record on grounds of failure to timely exchange, relevance, and lack of opportunity to examine witnesses, if necessary, relevant to the Attendance Record.

ALJ Woosley did not rule on Student's request because Student must make a showing of good cause. The January 23, 2012 Order following Pre-Hearing Conference states:

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.

Accordingly, the ALJ provided a briefing schedule, allowing Student to make a written motion, with supporting declaration and argument, and giving District an opportunity to file written response. Student's Motion to Admit Documentary Evidence was filed on February 27, 2012; District's opposition was filed March 1, 2012.

Student's motion fails on three grounds. First, there is no declaration from counsel, as required for purposes of showing good cause. Without a declaration, the statements of fact in the argument are unsupported by evidence.

Second, even if the unsupported facts regarding the request and production of the record are true, they fail to support a finding of good cause. Student's counsel admittedly had the Attendance Record since the first day of the hearing on February 6, 2012. Presenting the record in the last hour of an eight-day hearing, following 24 witnesses, was presumptuous. No reason is given as to why the record was not immediately presented at hearing, with written declaration to support good cause for admission to the documentary record. Such timely presentation would have assured passing of the five (5) days referred to in Education Code section 56505, subdivision (e)(7), before the conclusion of the hearing. If the ALJ admitted the record, District would have had an opportunity to question or call witnesses, if necessary.

Finally, Student's motion makes no argument or factual showing as to why the Attendance Record is relevant. The Attendance Record concerns Student's attendance at Pacific High School. Student did not begin to attend PCH until after the filing of this due process. If Student had an argument in support of the record's relevance in a due process hearing regarding the District's assessment and eligibility recommendations in early 2011, it should have been made in the motion. It was not. The document is irrelevant.

ORDER

The Student's Motion to Admit Documentary Evidence is denied.

Dated: March 01, 2012

/s/

CLIFFORD H WOOSLEY
Administrative Law Judge
Office of Administrative Hearings