BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

ROCKLIN UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019101186

ORDER FOLLOWING PREHEARING CONFERENCE

On January 6, 2019, Administrative Law Judge Cynthia Fritz, Office of Administrative Hearings, held a telephonic prehearing conference. The Administrative Law Judge is called an ALJ; the Office of Administrative Hearings is called OAH; and a prehearing conference is called a PHC.

Geralyn Clancy, Attorney at Law, appeared on behalf of Student. Marcy Gutierrez, Attorney at Law, appeared on behalf of Rocklin Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

DUE PROCESS HEARING

The hearing will take place on January 14, 15, and 16, 2020, and continue day to day at the discretion of the ALJ. The hearing shall begin at 9:30 AM on the first day and at 9:00 AM on all other days, unless otherwise ordered. The parties anticipate it will take four to six days to complete the hearing. Additional hearing dates will be discussed with the ALJ on the first day of hearing but the parties should be prepared to go forward day to day, including Fridays and Mondays, except for State holidays.

HEARING LOCATION

The hearing will be held at Rocklin Unified School District, 2615 Sierra Meadows Drive, Rocklin, California 95677.

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.

District facilities shall fully comply 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 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities. OAH requires Districts to file written certification that the facilities provided comply with these laws.

Rocklin must file the required certification within two days of this Order and provide facilities that comply with these laws.

Before the beginning of the hearing, Rocklin shall ensure that the hearing room is configured into a courtroom setting and shall contain:

- a table for Student and his representatives;
- a table for Rocklin's legal representative and special education representative;
- a table for the witness; and
- a table near an electrical outlet for the ALJ.

The same hearing room shall be used for each day of hearing and shall be available at least one hour before the beginning of the hearing each day. The hearing room shall be locked following the hearing each night. Rocklin shall ensure that the hearing room and access to it are in compliance with the all laws governing accessibility of government facilities to persons with disabilities.

ISSUES AND PROPOSED RESOLUTIONS

The issues at the due process hearing, and proposed resolutions, as alleged in the complaint and clarified by the parties and the ALJ during the PHC are:

ISSUES

1. Are Student's claims against Rocklin Unified School District, for the 2016-2017 school year through October 28, 2017, barred by the statute of limitations because the underlying complaint, filed on October 29, 2019, was not filed within the two years from the date Parent knew or should of known of the facts underlying the basis for the request against Rocklin.

2. Did Rocklin Unified School District fail in its child find obligations to Student from the 2016-2017 school year to October 28, 2017, by:

a. failing to seek and serve when it had information concerning suspected disabilities in Specific Learning Disability, Other Health Impairment, and Emotional Disturbance, that severely impacted Student's education;
b. failing to initiate and conduct a special education assessment at any time;
c. failing to provide an assessment plan;
d. failing to develop an individualized education program, called IEP, including goals, interventions, supports and related services, accommodations, and modifications;
e. failing to offer Student a systematic, evidence based writing program for students with dysgraphia;
f. failing to find Student eligible for special education under Specific Learning Disability, Other Health Impairment, and Emotional Disturbance, and thus denying Student access to special education?

3. Did Rocklin Unified School District fail in its child find obligations to Student from October 28, 2017, through August 20, 2019, by:
a. failing to seek and serve when it had information concerning suspected disabilities in Specific Learning Disability, Other Health Impairment, and Emotional Disturbance, that severely impacted Student's education;
g. failing to initiate and conduct a special education assessment prior to March 2018;
h. failing to provide an assessment plan;
i. failing to develop an IEP, including goals, interventions, supports and related services, accommodations, and modifications;
j. failing to offer Student a systematic, evidence based writing program for students with dysgraphia;

k. failing to find Student eligible for special education in Specific Learning Disability, Other Health Impairment, and Emotional Disturbance, and thus denying Student access to special education?

4. Did Rocklin Unified School District deny Student a free appropriate public education, known as FAPE, from August 21, 2019, to the present by:
   a. failing to draft appropriate, meaningful, and measurable goals in written expression, executive functioning, social skills, and behavior;
   b. failing to offer goals in all areas of suspected disability, specifically, psychological for Obsessive Compulsive Disorder and anxiety, social-emotional, academic, orthographic processing, fine motor, written expression, assistive technology, typing, executive functioning, self-regulation, sensory, task completion, and attention to task.
   c. failing to offer therapeutic interventions and counseling, such as individual and group weekly sessions, for Obsessive Compulsive Disorder and anxiety;
   d. failing to offer Student a systematic, evidenced-based writing program for students with Dysgraphia;
   e. failing to offer adequate speech and language therapy, specifically two to three 30-minute sessions per week, to address pragmatic language and social skills deficits;
   f. failing to offer a typing program, specifically one 60-minute session per week, provided by a qualified tutor;
   g. failing to offer occupational therapy, specifically one 60-minute session per week, provided by a qualified non-public agency;
   h. failing to offer adequate assistive technology services and consultation, equipment, programs, and applications;

i. failing to offer extended school year to include the following:
    1. four hours per week, for six weeks, of instruction with of a systematic evidence-based writing program for students with dysgraphia, provided by a qualified instruction knowledgeable about and experienced working with students with dysgraphia
    2. therapeutic interventions and counseling, individual and group weekly sessions, for Obsessive Compulsive Disorder and anxiety, such as the six-week placement at Rogers Behavior Health in Walnut Creek;
    3. typing program, one 60-minute session per week, for six weeks, provided by a qualified tutor;
    4. speech and language therapy, one 60-minute to 90-minute session per week, for six weeks, to address pragmatic language and social skills training, provided by a qualified non-public agency;
    5. occupational therapy, one 60-minute session per week, for six weeks, provided by a non-public agency;

j. denying meaningful participation by Student's mother in the August 21, 2019 IEP team meeting, by failing to address her concerns and Student's documented areas of need?

Student's issues were reorganized and clarified into four separate issues with subsets as discussed at the prehearing conference.

Rocklin objected to Student's issue number 4, subsection j, arguing that Student's complaint does not contain any facts specific to this issue, and requested dismissal. Student argues that Rocklin should have filed a notice of insufficiency and thus, the request for dismissal is untimely.

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation. (See H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.)

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint." (Sen. Rep. No. 108-185, *supra*, at p. 34.) The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. opn.]; *Escambia County Bd. of Educ. v. Benton* (S.D. Ala. 2005) 406 F.Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

Rocklin's request for dismissal of issue 4, subsection j is timely because the prehearing conference is the time to clarify issues and make objections after

clarification. Student's complaint issue 2, subsection j, renumbered as issue 4, subsection j, states "failing to ensure meaningful participation by [Student's] mother in the IEP process." The issue was further clarified at the PHC. The IDEA requires only a description of the nature of the problem, facts related to the problem and proposed resolutions to the extent known and available at the time (20 U.S.C. (b)(7)(A)(ii), a requirement liberally construed in light of the remedial and informal nature of the due process proceedings. Thus, Student's issue number 4, subsection j, as clarified is sufficient.

PROPOSED RESOLUTIONS

The resolutions requested by Student are summarized and include:

1. A finding that Student was denied a FAPE in the 2016-2017 school year through 2019-2020 school year, including extended school years, to the present time.

2. A finding that Rocklin shall immediately develop an IEP with amendments that include: a finding that Student is eligible under the categories of emotional disturbance as primary and specific learning disability as secondary; full-time placement at Brookfield School in Sacramento through the 2019-2020 school year with reimbursement in tuition, fees, and mileage; counseling, typing lessons, occupational therapy, and extended school year with an evidence based writing program for a student with Dysgraphia, therapeutic interventions and counseling, typing, speech and language therapy, and occupational therapy.

3. Compensatory education, reimbursement for out-of-pocket expenses, and a six-week placement in the in-patient program for Obsessive Compulsive Disorder and anxiety at Rogers Behavioral Health in Walnut Creek during the 2020 extended school year with Rocklin to fund the cost including out-of-pocket until the insurance cap is met, plus mileage, meals, hotel accommodations, and childcare for other child.

Rocklin filed its response to Student's complaint on November 8, 2019. (*M.C. v. Antelope Valley Unified School Dist.* (9th Cir. 2017) 858 F.3d 1189, 1199-1200.)

EXHIBITS

BINDERS

Exhibits shall be pre-marked and placed in three-ring binders before the hearing. Exhibit binders shall include a tab for each exhibit. Each binder shall contain a detailed table of contents which clearly identifies the tabs and documents. Binders should not be so full that the ALJ and witnesses cannot easily turn to the exhibit tabs and pages in the binders. Multiple binders may be submitted if necessary.

TAB AND PAGE NUMBERS

The parties must place a letter followed by a number on each tab to identify each exhibit. Student must use the letter S before the number to identify Student's exhibits. Rocklin must use the letter D before the number to identify Rocklin's exhibits. For example, S-1 means Student's exhibit tab 1 and D-1 means NAME's exhibit tab 1. Parties will number each page in the binder consecutively beginning with the first page of the first exhibit through the last page of the last exhibit. For example, if there are 100

total pages in the binder the first page of the first exhibit is 1 and the last page of the last exhibit in the binder is 100.

CONTENT

Each exhibit must consist of one document. Separate documents may not be combined into one exhibit. Emails or letters may be consolidated into one exhibit if they are part of a single chain of messages. Exhibits in the binders should be in chronological order.

Parties should include resumes or curriculum vitae for each witness who is expected to testify as an expert. Parties must exchange resumes not later than 24 hours before the witness is scheduled to testify and provide a copy to the ALJ before the witness testifies.

Rocklin's binder must include a color copy of the school calendar for each school year in question.

COPIES OF BINDERS

The parties must serve copies of their evidence binders on each other. This exchange is required by Education Code section 56505, subdivision (e)(7). Each party must bring two additional sets of their exhibit binders to the hearing. One set will be used by the ALJ, and the other set will be used by witnesses. The parties may not serve exhibits on OAH before the hearing.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not timely exchanged shall not be admitted into evidence at the hearing unless the ALJ rules that it is admissible.

WITNESSES

Parties are responsible for producing their own witnesses unless otherwise ordered by the ALJ. Parties shall make witnesses under their control reasonably available. The parties must schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses out of order. Neither party will be permitted to call any witnesses not timely disclosed except for good cause shown, and at the discretion of the ALJ.

The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony. Education Code, section 56505.1, subd. (h), empowers the ALJ to set a reasonable limit on the length of the hearing after consideration of four factors. The first two factors are the issues to be heard and the complexity of facts to be proven. The second two factors are the ability of the parties or their representatives to present their respective cases and the parties' estimates of the time needed to present their cases.

MEET AND CONFER

The parties are encouraged to review and shorten their witness and exhibit lists before the hearing. Evidence may be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear. The parties are ordered to meet and confer no later than January 9, 2019 to discuss the availability of witnesses, the order of witnesses and the length of witness testimony. The parties should attempt to eliminate duplicate exhibits from their binders. The parties may discuss whether they can produce a written stipulation stating basic facts to shorten the length of time needed for the hearing.

Rocklin subpoenaed a number of witnesses to appear on January 14, 2020. Student's counsel requested that the witnesses appear on alternative dates. The parties were ordered to meet and confer on this issue. If there is no arrangement as to the agreed dates and times that the subpoenaed witnesses are to appear, then the witnesses are ordered to appear on the date stated on the subpoena.

EVIDENCE PRESENTATION

a. In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 62.) In this case, Student requested the hearing and bears the burden of proof. Student's case-in-chief shall be presented first, followed by Rocklin, subject to the exception in paragraph b, below.

b. On the first day of hearing, the ALJ will only hear evidence pertinent to the statute of limitations and whether Student may assert claims arising more than two years before the filing of the complaint on October 29, 2019. This is called phase one of the hearing. First, Student will offer his evidence of the reasons he believes the statute of limitations should be extended. Then, Rocklin will offer its evidence in favor of the application of the two-year statute of limitations. Student will have a brief period for rebuttal. The parties will then give oral concluding statements. Subsequently, the ALJ will announce a ruling whether Student may assert claims arising before October 29, 2019, and the time period at issue in the hearing. Thereafter, the parties will receive a short recess to determine any changes to the witness order based on the ruling. The hearing will proceed as described in paragraph a, above, which is called phase two of the hearing. The statute of limitations ruling will be explained in the Decision. There is no break between phase one and two of the hearing. Student's counsel should be prepared to have witnesses available to timely begin phase two of the hearing.

The parties are expected to be prepared for full hearing days. The number of additional hearing days relies upon the efficiency of the attorneys' presentations of evidence. Any delays that occur in the administration of the hearing due to not having witnesses available, untimely return from lunch or breaks, unfinished evidence binders, evidence binders not properly labeled or numbered, the unnecessary submission of irrelevant and cumulative evidence, or other delays in the control of the parties, may affect the number of additional days ordered for the hearing.

WITNESS LISTS

The parties must provide a joint proposed witness list to the ALJ on the first day of hearing. The list should include dates and time estimates of expected testimony. In the event an agreement cannot be reached, each party shall prepare a separate written list. Student must have witnesses available in case there is no agreement. At the beginning of the hearing, the ALJ and the parties will discuss the length of time anticipated for direct and cross-examination of each witness and scheduling issues for individual witnesses. The ALJ will finalize the witness schedule. Parties must be prepared at the end of each day to discuss the witnesses to be presented the next day and the estimated time for the testimony each witness.

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 request permission to do so before the hearing. The party offering the witness must provide the witness with a complete set of exhibit binders from all parties before the witness testifies. The binders must be exact paper copies of all of each party's exhibits. Electronic copies are not acceptable. The party presenting the witness shall ensure the witness testifies from a private location with no other

persons present. The party offering telephonic testimony shall ensure that the witness has telephone equipment that allows testimony at a volume that allows clear transmission of what the witness is saying, allows the witness' testimony to make a clear recording, and allows the witness to hear objections and rulings.

Student requested the telephonic testimony of Laura Ballard, from Walnut Creek, California, which was granted subject to any relevancy objections at hearing. Student requested telephonic testimony of Ms. Moore, and Renee Janota, both from Brookfield School in Sacramento, California. The request was denied without prejudice. It is the ALJ's preference to have local witnesses testify in person absent exigent circumstances. However, should a local witness have the inability to testify in person, Student's counsel may request telephonic testimony again at the time of hearing or submit a motion with a supporting declaration with further explanation as to why a local witness is unable to testify in person. Rocklin requested the telephonic testimony of Father, who lives out-of-state, which was granted subject to any relevancy objections at hearing. The telephonic testimony witnesses shall be informed of the privacy and confidentiality rules pertaining to the information contained in the binders and of the proper procedure for disposal of the evidence binder following completion of the witness' testimony.

ELECTRONIC RECORDINGS

AUDIO RECORDING

A party may request permission to make an audio recording of the hearing. Permission to make an audio recording is subject to the ALJ's discretion and based upon certain conditions. The conditions are:

- the OAH recording is the only official recording;

- the parties shall turn the recording device on and off at the same time that the ALJ is on and off the record to avoid recording conversations while off the record;
- the recording device will be removed by the party recording during any recess where the party leaves the room;
- operation of the party's recording mechanism will not be allowed to delay the hearing;
- a parties' recording may not be given, provided or played to a witness, or potential witness; and
- the recording is subject to the same confidentiality as the due process hearing.

Both parties' request to audio record the hearing are granted, subject to these conditions.

VIDEO RECORDING

No party, witness or anyone else may make any video recording of any part of the proceedings.

RECORDINGS AS EXHIBITS

Student proposes to introduce all or part of a recording of an individualized education program team meeting. The ALJ has discretion to admit or exclude evidence in the form of a recording. Any request to submit a recording shall be considered at the time of hearing. The ALJ may grant or deny the request, or grant the request subject to certain conditions. The party offering the recording must establish that all or a part of the recording is relevant. The ALJ may request a transcript of the portion of the recording and have the party offering the recording to provide an exact identifiable

portion of the recording the party seeks to admit. The identities of any person speaking on the portion of the tape being introduced must be established. An ALJ may allow the opposing party to offer additional portions of a recording to establish the context, or to rebut, the recording.

COMPENSATORY EDUCATION OR REIMBURSEMENT

Any party seeking reimbursement for expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of the expenditures. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education. Documents offered as evidence to support a request for reimbursement must be separated by vendor.

MOTIONS

No prehearing motions are pending or contemplated. Any motion that was not filed three business days before the PHC, shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not timely filed.

STIPULATIONS

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

CONDUCT OF COUNSEL AND HEARING ROOM DECORUM

Counsel, all parties, and all witnesses must conduct themselves in a professional and courteous manner at all times. Cellular phones must be shut off or set to vibrate during the hearing unless the ALJ grants permission otherwise.

LANGUAGE INTERPRETERS AND REASONABLE ACCOMMODATIONS

A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in a mediation or hearing may contact OAH at (916) 263-0880, or send an email to OAHADA@dgs.ca.gov as soon as the need is known. The e-mail should have "Request for Accommodation" in the Subject Line. Additional information concerning requests for reasonable accommodation is available on OAH's website at: https://www.dgs.ca.gov/OAH/Services/Page-Content/Office-of-Administrative-Hearings-Services-List-Folder/Accommodations-at-OAH.

No request for accommodations or a language interpreter was made at the prehearing conference.

HEARING CLOSED TO THE PUBLIC

The hearing is closed to the public. Special Education hearings are closed to the public unless Student requests the hearing to be open to the public.

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 if 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. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH at https://www.applications.dgs.ca.gov/oah/oahsftweb.

If a full and final written settlement agreement is reached after 4:00 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.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed 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 before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

FAILURE TO COMPLY

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATED: January 7, 2020

DocuSigned by:
Cynthia Fritz
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Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings