BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. RIVER SPRINGS CHARTER SCHOOL; RIVERSIDE COUNTY OFFICE OF EDUCATION.	OAH Case No. 2017120339 ORDER FOLLOWING PREHEARING CONFERENCE; CONTINUING HEARING AND PREHEARING CONFERENCE; DENYING MOTION TO DISMISS; DENYING MOTION TO SHIFT FEES; AND DENYING MOTION TO SHIFT THE BURDEN OF PROOF

On January 22, 2018, a telephonic prehearing conference was held before Administrative Law Judge Sabrina Kong, Office of Administrative Hearings. Attorney Cara Lucier appeared on Student's behalf. Attorney Stephanie Baril appeared on River Springs Charter School's behalf. There was no appearance on Riverside County Office of Education's behalf. The PHC was recorded.

Charter School's Motion to Continue

Charter School filed a motion for continuance on January 17, 2018. On January 19, 2018, Student filed a non-opposition to the continuance and requested mediation be scheduled with the Charter School.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The complaint was filed on December 7, 2018; and this is a first continuance agreed to between Student and Charter School so that they may participate in mediation. Further, it provides Riverside County Office of Education an opportunity to file a response to the complaint and alleviates Student's alleged prejudice in preparing for hearing without the benefit of Riverside County Office of Education's response to the complaint. The motion is granted. All dates are vacated. The new prehearing conference and hearing dates are as follows:

Prehearing Conference: March 5, 2018, at 10:00 a.m.
Due Process Hearing: March 14, 15, and 20, 2018 at 9:00 a.m., with the exception of the first day of hearing which shall begin at 9:30 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ. The hearing will be held at Charter's School's offices located at 27740 Jefferson, Suite #100, Temecula, CA 92590. [1]

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.

Charter School's Motion to Dismiss Riverside County of Education

Charter School's Motion to Dismiss was based on its assertion that the Riverside County of Education was not the appropriate party because it did not have the responsibility to provide Student with a free and appropriate public education in the 2016-2017 school year; this was the Charter School's responsibility. Student opposed stating that the Riverside County of Education was the appropriate party because it had the duty to provide FAPE to Student because it was his district of residence. Further, Charter School did not represent the Riverside County of Education and had no standing to request a dismissal on its behalf. Student's arguments were persuasive as the Charter School did not represent the Riverside County of Education and had no authority to speak on its behalf.

Charter School's Motion to Dismiss the Riverside County of Education as a party is denied. Riverside County of Education is ordered to file a response to Student's complaint with OAH by 10:00 a.m. on January 26, 2018, and serve such response on all the parties.

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[1] The hearing location was based on Charter's School's available facilities that are compliant with state and federal laws. Student stated OAH's San Diego office would be more convenient to parents. Charter School disagreed, citing undue hardship as most of the witnesses would be required to travel from Riverside County to San Diego County if the hearing were held in San Diego. The parties were asked to meet and confer on this issue, and if it remained unresolved, timely file a motion based on the new hearing dates.

Student's Motion to Shift Costs[2]

Student filed a motion to shift fees of $520 to the Riverside County of Education for its failure to file a response causing Student to file a motion to compel its response. Student's motion to shift fees is denied. At the PHC, the Riverside County of Education was ordered to file a response to Student's complaint with OAH by 10:00 a.m. on January 26, 2018, and serve such response on all the parties. Should the Riverside County of Education not comply with OAH's January 22, 2018 order, Student may request reasonable fees incurred in obtaining Riverside County of Education's compliance along with the $520 in his January 17, 2018 motion to shift fees.

Student's Motion to Clarify and Shift the Burden of Proof

Student filed a motion to shift the burden of proof to Charter School and Riverside County of Education on the basis that parents were unable to discern how much group or individual speech and occupational therapy services was offered to Student in the 2016-2017 school year from the individualized education program document.

The party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62). However, the Ninth Circuit shifted the burden of proof from the filing party, student, to the school district after finding that the school district rendered it impossible for parents to assess the substantive reasonableness of the services it offered the student. (*M.C. v. Antelope Valley Unified Sch. Dist.* (9th Cir. 2017) 858 F.3d 1189.) The facts presented in the motion, alleged vagueness of whether District's offer of speech and occupation therapy services were individual or group, did not justify shifting the burden of proof to District. Student's motion to shift the burden of proof is denied.

IT IS SO ORDERED.

DATE: January 22, 2018

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Sabrina Kong
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SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings

[2] Although Student labels it a Motion to Shift Costs, Student was requesting $520 in attorney's fees. Therefore, the Motion will be referred to as a Motion to Shift Fees.