BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SACRAMENTO CITY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016050013 ORDER IDENTIFYING ISSUES FOR THE DUE PROCESS HEARING

On June 10, 2016, a telephonic prehearing conference was held before Administrative Law Judge B. Andrea Miles, Office of Administrative Hearings. Maureen Tabari, Attorney at Law, appeared on behalf of Student. Jessi Gasbarro, Attorney at Law, appeared on behalf of Sacramento City Unified School District. During the PHC, Student's issues for hearing were discussed. Sacramento City's motion to dismiss three of Student's issues for a lack of jurisdiction was granted. However, the parties were informed that the ALJ would the address the reframing and reorganization of the remaining issues with the parties on the first day of hearing.

On the first day of hearing, June 16, 2016, the ALJ reviewed the issues for the case in more depth with counsel. Both parties were provided the opportunity to be heard regarding the issues at that time. Student's motion to dismiss several additional issues was granted. Sacramento City moved to dismiss Issue 3(a), as memorialized in the June 13, 2016 Order Following PHC. When asked for clarification regarding the issue, Student asserted that Issue 3(a) was alleging a reduction of educational accommodations under Student's 504 Plan during the 2014-2015 school year. OAH lacks jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973, Section 1983, the ADA, and related state and federal civil rights laws. Accordingly, Sacramento's motion to dismiss Issue 3(a) for lack of jurisdiction was granted.

On June 20, 2016, the undersigned provided both parties with a copy of the proposed reframed and reorganized issues, based on the June 16, 2016 discussion.[1] Student was directed to clarify the time period covered within several of her issues. On June 21, 2016, Student identified the time periods for the aforementioned issues. Both parties had the

[1] The ALJ has the authority to redefine a party's issues providing no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

opportunity to be heard on all issues. This order is intended to memorialize the reframed and reorganized issues as identified on June 20, 2016.

The issues at the due process hearing are listed below.

Issue 1: Did Sacramento City deny Student a free appropriate public education during the 2013-2014 school year, beginning April 21, 2014, by:

a. Failing to conduct assessments in all areas of suspected disability;

b. Failing to find Student eligible for special education; and

c. Failing to offer appropriate supports, services, and goals?

Issue 2: Did Sacramento City deny Student a FAPE from the beginning of the 2014-2015 school year through May19, 2015, by:

a. Failing to identify Student as a child with special needs;

b. Failing to assess Student for special education; and

c. Failing to hold an individualized education program team meeting to develop appropriate supports, services, and placement?

Issue 3: Did Sacramento City deny Student a FAPE during the 2014-2015 school year by committing the following procedural violations:

a. Failing to assess Student in response to Parents' January 19, 2015 request;

b. Intentionally misrepresenting the IEP process by telling Parents that in order for Student to be found eligible under the category of emotional disturbance under the IDEA, they would have to go through a process separate from the IEP process;

c. Having a policy of determining eligibility for special education outside the IEP team meeting;

d. Having a policy of offering accommodations and services based on a student's special education eligibility category rather than based on a student's unique needs;

e. Misrepresenting to Parents that Sacramento City could not have Student assessed in the area of emotional disturbance nor find Student eligible under the category of emotional disturbance without using a process separate from the IEP process at the May 20, 2015 IEP team meeting; and

f. Failing to consider emotional disturbance as an eligibility category for Student at the May 20, 2015 IEP team meeting?

Issue 4: Did Sacramento City deny Student a FAPE beginning May 20, 2015, through April 21, 2016, because its initial assessment, dated May 20, 2015, failed to assess Student in all areas of suspected disability?

Issue 5: Did Sacramento City deny Student a FAPE beginning May 20, 2015, through April 21, 2016, because its May 20, 2015 psychoeducational assessment failed to appropriately assess Student?

Issue 6: Did Sacramento City deny Student a FAPE beginning May 20, 2015, through April 21 2016, by failing to offer Student appropriate goals, accommodations, services, and placement in the May 20, 2015 IEP?

Issue 7: Did Sacramento City deny Student a FAPE during the 2015-2016 school year by committing the following procedural violations:

a. Having a policy of determining eligibility for special education outside the IEP team meeting;

b. Having a policy of offering supports, services, and accommodations based on a student's special education eligibility category rather a student's unique needs;

c. Having a policy of not providing one-to-one instruction to meet a student's unique needs;

d. Having a policy of not tailoring curriculum to meet a student's individual needs;

e. Failing to convene an IEP team meeting when Student was not making appropriate progress;

f. Failing to consider Parent's input at the December 15, 2015 IEP team meeting;

g. Failing to hold an IEP team meeting after Parents advised Sacramento City on January 25, 2016, that Student could no longer attend school;

h. Failing to hold an IEP team meeting following Parents' request on March 3, 2016;

i. Failing to provide an appropriate response to Parents' December 15, 2015, January 25, 2016, February 10, 2016, and March 1, 2016 requests for home hospital instruction or home instruction;

Issue 8: Did Sacramento City deny Student a FAPE during the 2015-2016 school year to the date of hearing by preventing Parents from meaningfully participating in the April 18, 2016 IEP team meeting by:

a. Failing to consider Parents' input at the April 18, 2016 IEP team meeting;

b. Not asking Parents any questions regarding Student's needs;

c. Inappropriately disregarding Student's need for specialized instruction, therapeutic interventions, and residential treatment;

d. Disregarding the recommendations and evaluations of independent educational evaluator, Dr. Kristin Gross;

e. Disregarding Elizabeth Cowie's recommendations;

f. Misrepresenting content of conversation regarding Student's needs with Student's psychiatrist, Dr. Chiu;

g. Failing to disclose that Sacramento City had been considering Hiram Johnson High School's Learning Disabled classroom as a placement prior to the IEP team meeting; and

h. Predetermining it offer of placement to be Hiram Johnson's learning disabled class?

Issue 9: Did Sacramento City deny Student a FAPE from May 20, 2015, through the date of hearing when it failed to implement the May 20, 2015 IEP by:

a. Failing to provide Student social worker counseling services;

b. Failing to provide Student with all accommodations; and

c. Failing to provide Student with specialized academic instruction?

Issue 10: Did the December 15, 2015 IEP deny Student a FAPE from December 15, 2015, to April 21, 2016, by failing to:

a. Find Student eligible for special education under the category of emotional disturbance; and

b. Offer Student appropriate goals and services?

Issue 11: Did the April 18, 2016 IEP deny Student a FAPE beginning December 15, 2015, through April 21, 2016, by failing to:

a. Find Student eligible for special education under the category of emotional disturbance;

b. Offer Student appropriate goals and services, including one-to-one academic support and social emotional services, and placement; and

c. Offer Student home hospital instruction or home instruction?

IT IS SO ORDERED.

DATE: June 27, 2016

DocuSigned by:
B. Andrea Miles
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B. ANDREA MILES
Administrative Law Judge
Office of Administrative Hearings