BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

| | |
|---|---|
| In the Matter of: | |
| PARENT ON BEHALF OF STUDENT, | OAH Case No. 2015030342 |
| v. | ORDER GRANTING REQUEST TO RE-OPEN HEARING FOR PRESENTATION OF ADDITIONAL EVIDENCE AND GRANTING CONTINUANCE |
| RINCON VALLEY UNION ELEMENTARY SCHOOL DISTRICT. | |

On March 4, 2014, Student, through lay advocate Myra Galt, filed a request for due process hearing (complaint) against Rincon Valley Union School District and the Redwood Consortium for Student Services.[1] The complaint alleged, inter alia, that Rincon Valley had denied a series of requests by Parents for a placement for Student, who at all relevant times was three and four years old. At one point the complaint alleges that Parents requested "another placement, possibly into a special day class," and at another that Rincon Valley denied payment for a placement "including a request for special day class." As a resolution, Student requested placement in the Kiwi Preschool, including its related Reflective Network Therapy program.

At the prehearing conference on April 20, 2015, Administrative Law Judge Andrea Miles and the parties extensively discussed the formulation of the issue for hearing. The Order Following Prehearing Conference tentatively defined the issue as follows:

> Did Rincon Valley and/or Redwood Consortium deny student a free appropriate public education by failing to offer Student placement in a special day class and appropriate related services at the individualized education program team meetings which occurred during the 2014-2015 school year?

This statement of the issue was followed by the rulings that Student would be required at the outset of hearing to identify all the IEP team meetings at issue, and that "[a]ny further discussion regarding the framing of the issue will be held at the beginning of the hearing."

On April 28, 29 and 30, 2015, the due process hearing was held before the undersigned. It was apparent from the evidence that the issue was still only vaguely defined. The evidence showed that, during the IEP team meetings at issue, Parents had repeatedly requested that Rincon Valley place Student in a classroom during the school day. Parents

[1] The two entitites are referred to herein for convenience as "Rincon Valley"; any differences between their roles and responsibilities do not matter to this Order.

were unfamiliar with special education terminology and at times would specifically request placement in a special day class (SDC), although they testified they did not fully know at the time what the term meant. At other times they would simply request placement in a "preschool setting," by which they meant some classroom in which Student could have an educational experience and receive related services.

At hearing the parties fully litigated whether Student required placement in an SDC, or whether he could be satisfactorily educated in a general education setting with services and supports. They also fully litigated whether Parents' unilateral placement of Student at the Kiwi Preschool, with its Reflective Network Therapy component, was appropriate, and what amounts of money Parents might be reimbursed for that placement, if reimbursement were to be ordered. The evidence showed that the Kiwi Preschool is a general education preschool, and Student presented substantial evidence that he had made satisfactory progress there, with appropriate supports including Reflective Network Therapy. Rincon Valley presented evidence that Reflective Network Therapy was inappropriate for Student, while Student presented evidence that it was appropriate. Student did not attempt to reconcile Parents' requests for placement in an SDC with their prayer for placement in Kiwi, a general education preschool.

At the close of the hearing, the undersigned requested that the parties brief certain issues, including 1) what obligation, if any, a school district that does not operate general education preschools has in making an offer of placement to a student aged three to five who can be satisfactorily educated in a general education environment with appropriate services and supports, and 2) what affect the requirement of placement in the least restrictive environment has on the proper resolution of this matter.

On May 20 and 21, 2015, Student and Rincon Valley, respectively, filed closing briefs responding to those requests for briefing. In its closing brief, Rincon Valley argues that it had inadequate notice at hearing that the issues would include whether it had an obligation to place Student in a general education preschool with appropriate services and supports, and that, if the ALJ chose to decide that issue, the hearing should be re-opened for the taking of additional evidence on that question. On May 22, 2015, Student filed a response to Rincon Valley's request, arguing that the evidence in the current record is sufficient.

In order to do substantial justice in this matter, the undersigned tentatively intends to decide whether Rincon Valley should have offered to place Student in a general education preschool with appropriate services and supports. Although the evidence already presented on that issue is in the ALJ's view sufficient for decision,[2] complete fairness to Rincon Valley suggests that it have unquestionably ample notice of the issue and an opportunity to present evidence on it. Student is entitled to the same opportunity. Rincon Valley's request to re-

[2] In the alternative, to the extent that the issue on which evidence is re-opened constitutes a new issue, the ALJ has authority to add the issue under 20 U.S.C. § 1415(c)(2)(E)(II).

open the hearing for the taking of additional evidence is therefore granted. Rincon Valley's request necessarily implies a request for a continuance for that purpose, and that request will be granted as well.

## ORDER

1. Rincon Valley's request to re-open the hearing for the presentation of additional evidence on the question whether Rincon Valley denied Student a FAPE during the 2014-2015 school year by failing to place him in a general education environment with appropriate services and supports is granted. Both parties may present evidence related to that issue.

2. The matter is continued to May 29, 2015, at 10:00 a.m., for a telephonic status conference at which the ALJ will calendar additional time for the presentation of additional evidence and resolve related matters such as the need for the exchange of new exhibits, if any.

DATE: May 22, 2015

**/s/**

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings