BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SEQUOIA UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2015020856 ORDER FOLLOWING PREHEARING CONFERENCE

On June 29, 2015, a telephonic prehearing conference was held before Administrative Law Judge Theresa Ravandi, Office of Administrative Hearings. Kathryn E. Dobel, Attorney at Law, appeared on behalf of Parent and Student. Kathryn E. Meola, Attorney at Law, appeared on behalf of Sequoia Union High School District. The PHC was recorded.

Based on discussion with the parties, the ALJ issues the following order:

1. Hearing Dates, Times, and Location. The hearing shall take place at Sequoia's District Office located at 480 James Avenue, Redwood City, California, 94062, on July 13, 2015, at 1:30 p.m., July 14-16, 2015, at 9:00 a.m., July 20, 2015, at 1:30 p.m., and July 21-22, 2015, at 9:00 a.m., and continue day to day, Monday through Thursday as needed at the discretion of the ALJ.[1] Sequoia shall provide a facility for the hearing that fully complies 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), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.

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.

[1] At a minimum, the hearing room shall have four or more separate tables capable of being moved into a courtroom configuration with an electrical outlet near the ALJ's table. Sequoia shall ensure that all parties, witnesses, and the ALJ have drinking water available to them throughout the hearing.

2. Issues and Proposed Resolutions.[2] The issues in a due process hearing are limited to those identified in the written due process complaint. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) The issues were discussed and clarified during the PHC and are listed below.[3]

Issue One: Did Sequoia deny Student a free appropriate public education during the 2012-2013 school year, beginning February 18, 2013, by failing to fulfill its child find duties by:

a. failing to notify Parents of its obligation to assess and serve Student as a student with special needs residing in its geographical area; and

b. failing to identify, locate, and evaluate Student and convene an individualized education program team meeting and make an offer of placement and related services?

Issue Two: Did Sequoia deny Student a FAPE by failing to timely assess her pursuant to Parents' June 20, 2013 request for special education assessment?

Issue Three: During the 2013-2014 school year including extended school year, did Sequoia deny Student a FAPE by committing the following procedural violations:

a. failing to offer an administrative IEP placement[4] at the start of the school year;

b. failing to convene an IEP team meeting within 30 days of the start of the school year;

c. failing to make a specific written offer of placement at the November 26, 2013 IEP team meeting; and

d. failing to provide Parents a complete written IEP document from the December 10, 2013 IEP team meeting until March 7, 2014?

Issue Four: For the 2013-2014 school year and extended school year, did Sequoia substantively deny Student a FAPE by:

a. failing to offer an appropriate placement that would provide meaningful educational benefit at the December 10, 2013 IEP team meeting; and

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[2] Student's originally numbered Issues 9 and 10 are proposed remedies as opposed to separate legal issues.

[3] The parties may further discuss the framing of the issues at the start of the hearing.

[4] At the start of the hearing, Student shall clarify what is meant by this term.

b. failing to offer and provide in the June 27, 2014 and July 9, 2014 IEP's, an appropriate individualized transitional program and placement including appropriate academic programming and therapeutic services for ESY 2014 following her discharge from Alpine Academy?

Issue Five: During the 2014-2015 school year, did Sequoia deny Student a FAPE by failing to implement the agreed-upon elements of the July 9, 2014 IEP?

Issue Six: Did Sequoia substantively deny Student a FAPE during the 2014-2015 school year by failing to offer an appropriate individualized program and placement including appropriate academic programming and therapeutic services at the following IEP team meetings:

a. June 27, 2014;

b. July 9, 2014; and

c. January 9, 2015?

Proposed Resolutions: Student requests reimbursement for 1) the costs of Alpine Academy including tuition, room and board, therapy and related transportation including transportation for family visits and therapy; 2) the costs of placement at Lydian Academy; and 3) the costs of therapy provided by Vive.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall use numbers to identify exhibits, but shall place the letter "S" or "D" in front of the exhibit to designate if it is a Student or District exhibit (for example, "S-5, S-6, or D-1, D-2"). Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be Bates-stamped. Each exhibit binder shall contain a detailed table of contents. The parties are required to serve their evidence binders on each other in compliance with Education Code section 56505, subdivision (e)(7). At the hearing, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and a second exhibit binder for use by witnesses. The parties may not serve exhibits on OAH prior to the hearing. In the event of duplicate exhibits, the most legible version will be used.

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

4. Witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses out of order. Neither party shall be permitted to call any witnesses who are not timely disclosed, except at the discretion of the ALJ.

The parties are encouraged to review and shorten their witness lists prior to the hearing, bearing in mind that evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear. During the PHC, Student narrowed her witness list to approximately 20 of her identified 27 witnesses. The only Sequoia witness that Student intends to call is the Director of Special Education. Sequoia identified 12 witnesses, 6 of whom are shared witnesses. The parties are ordered to meet and confer by July 8, 2015, as to the schedule of witnesses and projected length of direct and cross examination.

At the start of the hearing, the parties shall present a final, joint schedule of witnesses with time estimates. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony, to ensure that this matter is concluded within the time allotted, based upon the parties' time estimates and the issue presented.

5. Order of Presentation of Evidence and Scope of Witness Examination. Student bears the burden of proof and shall present her evidence first, followed by Sequoia. Where Student and Sequoia intend to call the same person to testify, each party will examine the witness immediately after the other party, so the witness will only need to be called to the witness stand once. After the first direct and cross-examinations, each party shall be limited in examining the witness to only those matters raised in the immediately preceding examination.

6. 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 move in advance for leave to do so, unless the opposing party has stipulated that the witness may appear by telephone. The proponent of the witness shall provide the proposed witness with a complete set of exhibit binders from all parties, containing all of each party's exhibits, prior to the hearing; and shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness, and the witness to hear objections and rulings. No witness will be heard by telephone unless all these requirements have been fulfilled.

Student requested permission for telephonic testimony for the following out-of-state witnesses: Kevin O'Keefe, Coady Schuler, Donna Jenkins, Pegeen Liston, Andrew Fish, Colleen Croff, and Anna Wronsky. Sequoia did not oppose the request for telephonic testimony, and Student's motion was granted. Student shall provide each telephonic witness with a complete exhibit binder from each party, containing all of each party's exhibits, prior to the hearing, and Sequoia shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness.

Sequoia is investigating which of its proposed witnesses may be out of town during the hearing and will fill a motion for telephonic testimony if needed.

7. Electronic Recording of Hearing. At this time, neither party intends to audio record the hearing. Both parties are authorized to make an audio recording of the hearing but

shall inform the ALJ if they intend to do so. The following conditions apply to any recording: 1) that OAH's recording is the only official recording; 2) that the recorder will be turned on and off at the same time as the ALJ's recording, to avoid recording conversations while off the record; and 3) the operation of the party's recording mechanism will not be allowed to delay the hearing. Failure to comply with these conditions may result in a revocation of this order which grants the parties permission to make an audio recording of the hearing. No party is allowed to video tape the proceedings.

8. Motions. Student may file a motion requesting special consideration for Student's testimony specifically that the ALJ read to Student all of the questions posed by each party. Sequoia opposes any such motion. Sequoia may file a request for telephonic testimony. Any other motions filed after this date shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not made prior to or during the prehearing conference of June 29, 2015.

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

10. Conduct of Counsel and Hearing Room Decorum. Counsel, all parties, and all witnesses shall conduct themselves in a professional and courteous manner at all times. Cellular phones, pagers, recorders, and other noisemaking electronic devices shall be shut off or set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ.

11. Compensatory Education and Reimbursement. Any party seeking reimbursement of expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of expenditures, as part of its case in chief. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

12. Special Needs and Accommodations. A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk at (916) 263-0880, or the OAH ADA Coordinator at OAHADA@dgs.ca.gov or 916-263-0880, as soon as the need is made known. Additional information concerning a request for reasonable accommodation is available on OAH's website at http://www.dgs.ca.gov/oah/Home/Accommodations.aspx.

At present, other than Student's possible request for special consideration during her testimony, neither party anticipates the need for special accommodation for any witness or party, or for interpreter services.

13. Hearing Closed To the Public. At the request of Student, the hearing will be closed to the public.

14. 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 should 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.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 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. THE PARTIES SHOULD SIMULTANEOUSLY FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT THE FAXINATION LINE AT 916-376-6319.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received 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 the evening prior to the hearing or the morning of the hearing.

15. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: June 29, 2015

/S/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings