BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. RIO SCHOOL DISTRICT,	OAH Case No. 2015070030 (Primary)
RIO SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2015060745 (Secondary) ORDER FOLLOWING PREHEARING CONFERENCE

On August 10, 2015, a telephonic prehearing conference was held before Administrative Law Judge Alexa J. Hohensee, Office of Administrative Hearings. Scott B. Ayers, Attorney at Law, appeared on behalf of Student. Sundee M. Johnson, Attorney at Law, appeared on behalf of Rio School District. The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on August 20, 24, 25 and 26, 2015, and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin each day at 9:00 a.m. and end at 4:30 p.m., except on the first day of hearing the hearing shall begin at 9:30 a.m., and on August 24, 2015, the hearing shall begin at 1:30 p.m., unless otherwise ordered.

The hearing shall take place at Rio Linda Elementary School, Room 4, located at 2131 Snow Avenue, Oxnard, California 93036. District's 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), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.

The hearing room shall have separate tables capable of being moved into a courtroom configuration, as follows: (1) one table for Student's representatives; (2) one table for District's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table. District shall ensure that the hearing room is reasonably quiet to preserve the quality of the audio record.

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.

2. Issues and Proposed Resolutions. The issues at the due process hearing in these consolidated matters are listed below.

Student's Case

1. Did District offer Student a free appropriate public education from the beginning of the 2014-2015 regular school year through April 13, 2015?

2. Did District offer Student a FAPE from April 13, 2015 through the 2015-2016 regular and extended school year by failing to offer an appropriate placement in the least restrictive environment?

District's Case

3. Did the IEP's of March 9, April 13 and June 8, 2015 offer Student a FAPE in the least restrictive environment?

As remedies, Student seeks a determination that District's IEP offers did not constitute a FAPE in the least restrictive environment, and that Student's aide be given applied behavior analysis training before the beginning of the 2015-2016 school year. District seeks a determination that the IEP's at issue offered a free appropriate public education in the least restrictive environment.

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 in a way that makes clear the party offering it (such as "S1" or "D2"). 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. Each party shall serve an exhibit binder containing its respective exhibits on the other party by August 13, 2015, 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.

The parties shall meet and confer by 5:00 p.m. on Tuesday, August 18, 2015, to eliminate duplicate exhibits from the exhibit binders. Duplicate exhibits and tabs should be removed from all binders prior to the first day of hearing. Exhibits do not need to be re-numbered after duplicates are removed. The parties are encouraged, if the total number of

documents is not too large, to place the exhibits for both parties into one binder. Each exhibit shall consist of one document; separate documents may not be combined into one exhibit.

The parties shall exchange resumes or curriculum vitae for each witness who is expected to testify as to their professional credentials. Notwithstanding the requirements of Education Code section 56505, subd. (e)(7), the parties shall exchange resumes not later than 24 hours before the witness is scheduled to testify.

District shall include as part of its exhibits the school calendar(s) for all of the years at issue. Notwithstanding the requirements of Education Code section 56505, subd. (e)(7), Charter Schools shall serve a copy of the school calendar(s) on Student by August 18, 2015 and include the school calendar(s) in the binders provided for use by the witnesses and the ALJ.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not included in the exhibit lists and not previously exchanged shall not be admitted into evidence at the hearing unless it is supported by written declaration under penalty of perjury, and the ALJ rules that it is admissible. Education Code section 56505, subd. (e)(8), affords each party the right to prohibit the introduction of any evidence at the hearing that has not been disclosed at least five days before the hearing.

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 to the other party. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses twice or out of order. Neither party shall be permitted to call any witnesses not disclosed in the party's prehearing conference statement and listed below, except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ. Education Code section 56505, subd. (e)(8), affords each party the right to prohibit the introduction of any evidence at the hearing that has not been disclosed at least five days before the hearing.

On the first day of hearing before the first witness testifies, the parties shall provide the ALJ with one **joint** detailed hour-by-hour schedule of all witnesses expected to testify at hearing, which list shall also include an estimate of time for each party's direct, cross, re-direct and re-cross examination.

The parties are ordered to meet and confer by 5:00 p.m. on Tuesday, August 18, 2015, as to the schedule of witnesses. The parties shall coordinate the availability and order of testimony of witnesses to ensure that there is a witness available to testify at all times during the hearing, and to ensure that the hearing is completed as scheduled. The parties shall prepare a joint witness schedule prior to the first day of hearing, identifying the witnesses each party intends to call, as opposed to witnesses the party may call, depending on the flow of the hearing and the evidence, with an estimate of the duration of each witness's direct, cross, re-direct and re-cross testimony. The ALJ will finalize the witness schedule, and will

revisit the schedule at the beginning and end of each hearing day. Counsel shall meet and confer each day of hearing to revise the witness schedule as needed.

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. 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 presiding at a due process hearing to set a reasonable limit on the length of the hearing after consideration of all of the following: (i) issues to be heard, (ii) complexity of facts to be proven, (iii) ability of the parties or their representatives to present their respective cases, and (iv) estimates of the parties as to the time needed to present their respective cases.

5. Scope of Witness Examination. 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. The order in which the parties present their cases in chief shall be such that each witness need appear only once, so the parties shall be required to establish their cases in chief during the first appearance of a witness.

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 physical 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. Electronic copies of the evidence binders will not be permitted. The witness must be on a clear telephone connection, and in a location that ensures the confidentiality of the proceedings. No witness will be heard by telephone unless all these requirements have been fulfilled.

The motion of Student to allow witnesses Kenda Shepard and Gina Arguelles, who both live outside of California, to testify telephonically is granted. District shall ensure that there is a telephone with a speaker and a telephone line available in the hearing room for purposes of telephonic testimony.

7. Order of Presentation of Evidence. In these consolidated cases, the order of presentation of evidence shall be as follows: Student's evidence will presented first, followed by District's evidence.

8. Motions. No pretrial motions are pending or contemplated. Any motion 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 PHC of August 10, 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/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. At present neither party anticipates the need for special accommodation for any witness or party, or for translation services.

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, the OAH ADA Coordinator at OAHADA@dgs.ca.gov or 916-263-0880 as soon as the need is made known. Additional information concerning requests for reasonable accommodation is available on OAH's website at http://www.dgs.ca.gov/oah/Home/Accommodations.aspx.

13. Hearing Closed To the Public. 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 vacated until OAH receives a letter of withdrawal, or those portions of the signed agreement withdrawing the case, with signatures. 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.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement as noted above, the parties shall submit a request for a status conference and provide the date of the next board meeting. The hearing dates will not be vacated without this information.

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

IT IS SO ORDERED.

DATE: August 10, 2015

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings