BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018020255
v.	ORDER FOLLOWING PREHEARING CONFERENCE
SANTA ROSA CITY SCHOOLS.	

On March 26, 2018, a telephonic prehearing conference was held before Administrative Law Judge Rita Defilippis, Office of Administrative Hearings. Laurene Bresnick, Attorney at Law, appeared on behalf of Student. Jennifer Nix, Attorney at Law, appeared on behalf of Santa Rosa City Schools. The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on April 3, 4, and 5, 2018, continuing day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at the Santa Rosa City Schools Special Services Offices located at 217 Ridgeway Avenue, Santa Rosa, California, 95401. The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 a.m. all other days, unless otherwise ordered.

As ordered in the scheduling order, Santa Rosa was to 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 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities. Santa Rosa failed to certify that it would provide a facility for this case that complied with the law. Santa Rosa shall inform OAH within two days of the date of this order it is able to certify that it will provide a facility that complies with the law.

Prior to the beginning of the hearing, Santa Rosa shall assist the ALJ to ensure that the hearing room is configured into a courtroom setting, including (1) a table for Student and his representatives; (2) a table for Santa Rosa's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. Santa Rosa shall also make reasonable effort to ensure that drinking water and tissue are available to all parties, witnesses and the ALJ.

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 to be determined at the due process hearing, and the proposed resolutions, are listed below:

Issues

1. Did Santa Rosa deny Student a free and appropriate public education from January 26, 2017, by failing to timely and adequately assess Student in all areas of suspected disability, specifically, emotional disturbance, and find him eligible for special education services under the eligibility category of emotional disturbance?

2. Did Santa Rosa deny Student a FAPE by failing to provide Parents with prior written notice in response to Parents' request for residential placement on September 14, 2017?

3. Did Santa Rosa deny Student a FAPE in his April 4, 2017 IEP, including IEP addendums dated September 22, 2017; November 1, 2017; January 12, 2017; and January 22, 2017, by:

a. failing to address Student's emotional disturbance that was preventing his ability to access his education and make educational progress;

b. failing to offer a placement and services that provided Student with diploma-track curriculum; and

c. failing to offer placement and services that would meet Student's needs for on-site therapeutic mental health staff in a residential setting?

Proposed Resolutions:

1. Petitioner seeks a finding that he requires residential placement in order to receive an appropriate and safe education.

2. Petitioner seeks a finding that Parents' unilateral placement of Student at Monarch Boarding Academy, a residential treatment center, or other appropriate residential treatment center, is and was an appropriate alternative education for Student such that Parents are entitled to reimbursement for the cost of that placement including tuition; related services; related transportation costs; the private independent evaluation supporting the need for placement; and educational consulting services to identify an appropriate placement as follows:

a. tuition and therapeutic services at Monarch from the date of unilateral placement to the present in the approximate amount of $947.00 a day;

b. related services of escorted transportation to place Student at Monarch and the costs of any requisite family therapeutic visits for parents at Monarch in an amount to be determined;

c. private neuropsychological evaluation by Dr. Sara Rice Schiff in the amount of $5500.00; and

3. Santa Rosa shall fund prospective placement of Student at Monarch Academy, or other residential treatment center, through his IEP.

4. Santa Rosa shall reimburse Parents for Attorney fees.

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 shall 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 shall not be admitted into evidence at the hearing unless the ALJ rules that it is admissible.

Parties are encouraged to present resumes or curriculum vitae for each professional witness.

The District shall include a color copy of the school calendar for each school year in question and shall have witnesses available to testify as to any legend notations that might be unique to Santa Rosa.

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. At the prehearing conference, Santa Rosa stated that there may be a gap in witnesses at hearing as it may be difficult to make them available due to it being spring break for the district. The parties agreed to meet and confer regarding these witnesses so that Student can issue subpoenas for any witnesses the district is unable to make 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 not timely disclosed except for good cause shown, and 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.

The parties shall attempt to reach agreement on a witness list for the first day of hearing. Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for direct and cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. Additionally, the parties shall be prepared at the end of each day of hearing to discuss the witnesses to be presented the next day and the time the testimony of each such witness is expected to take.

5. Scope of Witness Examination. Each witness shall be called to testify only once, except for rebuttal purposes, and all parties shall examine the witness on all issues when the witness is first called. 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 subordinate to the need for each witness to appear only once.

6. Telephonic Testimony. Student requested that witnesses from Monarch Academy be permitted to testify by telephone. Santa Rosa agreed but requested that the witnesses appear by video conference. Santa Rosa agreed to provide any equipment necessary for their testimony. Student agreed to the video conference testimony of Monarch Academy witnesses.

Student has shown good cause to support their request to have Monarch Academy witnesses testify by telephone and that request is hereby granted. The video conference testimony is also granted but the video conference testimony is subordinate to the need for the hearing to proceed in a timely manner. Therefore, if there is any difficulty with the operation or effectiveness of the video conferencing, the parties must be prepared to proceed with telephonic testimony only.

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. 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 video and 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 or via video conference unless all these requirements have been fulfilled.

7. Electronic Recording of Hearing.

a. Audio Recording. Santa Rosa requested to audio record the hearing. Santa Rosa's motion to make an audio recording of the hearing is granted, subject to the following conditions: 1) that OAH's recording is the only official recording; 2) that the recording will be turned on and off at the same time as the ALJ's recording, in order to avoid recording conversations while off the record; 3) the recording device will be removed by the party recording during any recess where the party leaves the room; and 4) that operation of the party's recording mechanism will not be allowed to delay the hearing. Should Student wish to record the hearing, he shall make the request in advance of the hearing and any recording of the hearing would be subject to the same conditions.

b. Video Recording. No party, witness or anyone else present may make any video recording of any part of the proceedings, including the witness testimony via video conference as specified in paragraph 6. Any person doing so shall be subject to sanctions.

8. Order of Presentation of Evidence. In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (Schaffer v. Weast (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) Here, Student requested the hearing and shall present his case-in-chief first, followed by Santa Rosa.

9. 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 three business days prior to the prehearing conference.

10. 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.

11. Stipulations and Exhibits. Stipulations to pertinent facts, contentions or resolutions are encouraged to promote hearing efficiency. Stipulations to routine foundational facts and avoiding duplicative exhibits are particularly favored. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

12. 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.

13. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for the services of an interpreter. 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 identified in the scheduling order, at (916) 263-0880, or the OAH ADA Coordinator at OAHADA@dgs.ca.gov or 916-263-0880 as soon as the need is known. Additional information concerning requests for reasonable accommodation is available on OAH's website at http://www.dgs.ca.gov/oah/Home/Accessibility.aspx.] Include in every order.

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

15. 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.

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

IT IS SO ORDERED.

DATE: March 26, 2018

DocuSigned by:
Rita Defilippis
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RITA DEFILIPPIS
Administrative Law Judge
Office of Administrative Hearings