BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. RIVERSIDE COUNTY OFFICE OF EDUCATION,	OAH CASE NO. 2013040771
PARENT ON BEHALF OF STUDENT, v. RIVERSIDE COUNTY OFFICE OF EDUCATION.	OAH CASE NO. 2013080367 ORDER FOLLOWING PREHEARING CONFERENCE

On October 11, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Susan Ruff, Office of Administrative Hearings (OAH). Tania Whiteleather, Attorney at Law, and Punam Grewal, Attorney at Law, appeared on behalf of Student and Student's parent (Student). Jack Clarke, Jr., Attorney at Law, appeared on behalf of the Riverside County Office of Education (COE). 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 begin at 1:30 p.m. on Monday, October 21, 2013. It shall continue at 9:00 a.m. on October 22, 23, 28, 29 and 30, 2013, unless otherwise ordered, and shall continue thereafter day to day, Monday through Thursday, as needed at the discretion of the ALJ.

COE will send written notice to OAH and Student's counsel with the address for the hearing by close of business on Monday, October 14, 2013.

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. The issues at the due process hearing are listed below.

a) Between April 16, 2011, and the present, did COE deny Student a free appropriate public education (FAPE) by failing to comply with the procedural requirements of special education law as follows: [1]

1) failure to fully and appropriately assess Student in all areas of suspected disability (including behavior, mental health, health, social-emotional, speech/language, and academics);

2) failure to use properly trained individuals to conduct any appropriate assessments of Student;

3) failure to identify Student's unique educational needs in behavior, mental health, health, social-emotional, speech/language, and academics;

4) failure to consider appropriate behavioral supports for Student;

5) failure to offer counseling to Student;

6) failure to offer appropriate placement and services in Student's IEP's;

7) failure to create appropriate, objectively measurable goals to address Student's unique needs;

8) failure to provide progress reports at required intervals to document Student's educational progress;

9) failure to convene an individualized education program (IEP) team meeting when Student failed to make anticipated progress; and

10) failure to include Student's parent in IEP team meetings and in all IEP determinations?

b) Did COE deny Student a FAPE by failing to provide a program in which Student could gain meaningful educational benefit?

---

[1] During the PHC, the ALJ recited Student's first issue as: "Did COE deny Student a FAPE by failing to provide Student with copies of his educational records pursuant to California Education Code section 56504 and the Individuals with Disabilities Education Act?" However, upon further review of the file, it appears that issue was previously found insufficient by OAH and no amended due process request was filed. Therefore that issue is no longer in the case. If Student has documentation to show that an amended due process request was timely filed, Student should submit that by fax to Sacramento OAH as soon as possible.

c) Did COE deny Student a FAPE by failing to comply with the assessment plan signed by Student's parent on May 28, 2013, to timely provide the agreed-upon assessments and convene an IEP meeting to review those assessments?[2]

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. Student shall use letters to identify exhibits and the COE shall use numbers. Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be consecutively paginated, for example by Bates-stamping. Each exhibit binder shall contain a detailed table of contents. 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.

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. COE has agreed to make current COE employees available to testify in Student's case-in-chief without need for a subpoena, provided that Student's counsel provides timely written notice to COE's counsel. COE's counsel will notify Student's counsel if any of the individuals identified as COE employees on Student's witness list no longer work for COE.

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.

6. Telephonic Testimony. Student's motion to allow Student's mother to testify telephonically is granted. Student shall supply her with copies of the evidence books, as set forth in the next paragraph.

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.

7. Motions. Prior to the PHC, Student made a motion to bifurcate one of Student's issues from the remainder of the case. After discussion during the PHC, the

[2] Issues four and five of Student's complaint filed on April 16, 2013, and issue two of the complaint filed on August 5, 2013, are outside the jurisdiction of an OAH special education due process hearing. To the extent that those issues were not previously dismissed, there are hereby dismissed as of the date of this order.

motion was denied without prejudice. No other motions are pending or contemplated by either party.

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

9. 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.

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. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for translation services.

12. Hearing Open to the Public. At the request of the parent, the hearing will be open to the public.

13. 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. ON THE BUSINESS 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.

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

IT IS SO ORDERED.

Dated: October 11, 2013

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings