

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT

v.

LOS ANGELES COUNTY OFFICE OF EDUCATION AND LOS ANGELES
COUNTY PROBATION DEPARTMENT

CASE NO. 2010080678

DECISION BY SETTLEMENT

(Cal. Code Regs., tit. 5, § 3087)

December 13, 2010

Charles Marson, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, enters this Decision by Settlement pursuant to section 3087 of title 5 of the California Code of Regulations.

David B. Sapp, Attorney at Law, represented Student. Vibiana Andrade, Attorney at Law, represented the Los Angeles County Office of Education (LACOE). Roger Granbo, Attorney at Law, represented the Los Angeles County Probation Department (Probation).

Student filed his request for due process hearing on August 17, 2010. On September 5, 2010, the parties jointly filed a Stipulated Final Decision in Lieu of Due Process Hearing (Stipulated Decision). On October 20, 2010, the ALJ discussed the proposed decision extensively with the parties, and the matter was continued. On November 10, 2010, the parties notified OAH that they had formally settled the matter according to the terms set forth herein.

FACTUAL FINDINGS

1. The parties stipulate that Student, who is 18 years old, is a resident of Los Angeles County and is eligible for special education and related services under the category "other health impairment" (OHI). He also has auditory and visual processing disorders, memory difficulties, and visual-motor integration deficits.

2. The parties stipulate that LACOE is the local education agency that operates the schools inside all Los Angeles County juvenile rehabilitation facilities, and that Student attended Challenger School, one of LACOE'S facilities, from October 29, 2007 through August 15, 2008, and from approximately February 12, 2009, through approximately April 7, 2010.

3. The parties stipulate that Probation's Office of Juvenile Institutions Bureau operates three juvenile halls and 18 juvenile camps, including the six camps at Challenger School, and is responsible for the care of youth detained in those facilities.¹

¹ Since no party has contested its designation as a party hereto, OAH has had no occasion to rule on the status of any party.

4. The parties hereto are also parties to *Casey A., et al., v. Robles, et al.* (C.D.Cal., No. CV 10-00192), a class action now pending in the Federal District Court for the Central District of California, in which an interim settlement is pending.

4. The parties' Stipulated Decision is attached to this Decision by Settlement as Exhibit A and incorporated herein.² It contains an Agreement obliging LACOE and Probation to provide to Student certain compensatory education services. The parties have determined that the terms of the Agreement are appropriate, and the compensatory education services agreed to have been incorporated in the Order below.

5. The Stipulated Decision does not contain any provision that is contrary to the law.

LEGAL CONCLUSIONS

1. The Individuals with Disabilities in Education Act and related state laws strongly encourage the settlement of special education disputes. (See, e.g., 20 U.S.C. § 1415(f)(1)(B); Ed. Code, § 56501.5, subd. (a) [requirement of resolution session before due process hearing]; 20 U.S.C. § 1415(e); Ed. Code, § 56500.3 [availability of mediation before due process hearing]; 20 U.S.C. § 1415(f)(1)(B)(ii); 34 C.F.R. § 300.510(d)(2)(2006);

² At the status conference on October 20, 2010, the parties stipulated that, in order to comply with federal laws governing the confidentiality of these proceedings, Student's proper name could be redacted from Exhibit A and the word "Student" inserted in its place. Exhibit A has been altered by the parties in accordance with that stipulation and not otherwise.

Cal. Code Regs., tit. 5, § 4650, subd. (a)(4); *Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1030 [administrative enforcement of settlements of due process disputes].)

2. Decision by settlement is authorized by California administrative law. (Gov. Code, § 11415.60; *Rich Vision Centers, Inc. v. Board of Medical Examiners* (1983) 144 Cal.App.3d 110.) Government Code section 11415.60 does not apply to special education due process disputes (Cal. Code Regs., tit. 5, § 3089), but the State Board of Education has adopted a similar regulation. Section 3087 of title 5 of the California Code of Regulations provides:

Notwithstanding Government Code section 11415.60 of the Administrative Procedure Act, a decision by settlement may be issued on terms the parties determine are appropriate so long as the agreed-upon terms are not contrary to the law.

3. Based on Factual Finding 4 and Legal Conclusion 2, the parties have settled their dispute on terms they have determined are appropriate.

4. Based on Factual Finding 5 and Legal Conclusion 2, the Stipulated Decision does not contain any agreed-upon term that is contrary to the law.

ORDER

The Los Angeles County Office of Education and the Los Angeles County Probation Department shall provide to Student the following compensatory education services:

1. 600 hours of individualized instruction, which may be structured as credit recovery in courses Student needs to complete to obtain his high school diploma or as CAHSEE prep classes. LACOE will identify a certified non-public agency to provide this instruction, such that LACOE can certify that the instruction provided satisfies the requirements for Student to earn credits toward high school graduation; and LACOE will award Student credits, including partial credits, where applicable, based on the services provided to Student. If Student completes sufficient credits through this process to satisfy LACOE's graduation requirements and satisfies all other relevant requirements under state law, then LACOE will award Student a high school diploma.

2. 75 hours of transition services, including but not limited to job training, coaching, interviewing skills, and resume preparation.

3. LACOE and Probation will not be responsible for providing or funding transportation to Student, or otherwise reimbursing Student for any transportation costs associated with accessing the services described in paragraphs 1 and 2, except as follows: LACOE and Probation will provide Student with a bus pass to go to attend such services upon request, but if Student does not utilize the services from the contracted non-public agency within the month that he is provided with a bus pass by LACOE and Probation, then the bus pass will not be renewed until such time as he demonstrates that he has made arrangements for such services and has attended at least one session. Student's counsel and LACOE and Probation will endeavor to identify certified non-public agencies who provide services locally and can provide services in a location accessible to Student.

4. Payment for the assessments completed by Carlos Flores and Bill Allen per the Interim Agreement in *Casey A. v. Robles*, supra.

5. Student shall have two years from the date of this Decision by Settlement to utilize the compensatory services specified above. Thereafter, any unused balance of hours shall expire, and LACOE and Probation shall not be required to pay for any additional compensatory services under this Decision by Settlement. This two-year period shall be tolled for the duration of any delay in provision of services to Student that is solely attributable to LACOE or Probation or the providers with whom they contract, and Student shall promptly notify LACOE and Probation of any issues related to interruption in services as soon as he or his attorneys are aware of such issues.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, no issue was heard and decided by OAH because the parties have agreed upon the terms of a settlement incorporated into this Decision.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this Decision. (Ed. Code, § 56505, subd. (k).)

CHARLES MARSON

Administrative Law Judge

Office of Administrative Hearings

EXHIBIT A

MARK D. ROSENBAUM (CA SBN 59940)

(mrosenbaum@aclu-sc.org)

DAVID B. SAPP (CA SBN 264464)

(dsapp@aclu-sc.org)

ACLU FOUNDATION OF SOUTHERN CALIFORNIA

1313 W. 8th Street

Los Angeles, CA 90017

Telephone: 213-977-5220

Facsimile: 213-417-2220

HERNAN VERA (CA SBN 175149)

(hvera@publiccounsel.org)

LAURA FAER (CA SBN 223846)

(lfaer@publiccounsel.org)

BENJAMIN CONWAY (CA SBN 246410)

(bconway@publiccounsel.org)

PUBLIC COUNSEL

610 South Ardmore Avenue

Los Angeles, CA 90005

Telephone: 213-385-2977

Facsimile: 213-385-9089

PAULA D. PEARLMAN (CA SBN 109038)

(paula.pearlman@lls.edu)

SHAWNA L. PARKS (CA SBN 208301)

[\(shawna.parks@lls.edu\)](mailto:shawna.parks@lls.edu)

SURISA E. RIVERS (CA SBN 250868)

[\(surisa.rivers@lls.edu\)](mailto:surisa.rivers@lls.edu)

DISABILITY RIGHTS LEGAL CENTER

919 Albany Street

Los Angeles, CA 90015

Telephone: 213-736-8366

Facsimile: 213-487-2106

DENNIS D. PARKER (Not Admitted in CA)

[\(dparker@aclu.org\)](mailto:dparker@aclu.org)

LAURENCE M. SCHWARTZTOL (Not Admitted in CA)

[\(lschwartztol@aclu.org\)](mailto:lschwartztol@aclu.org)

AMERICAN CIVIL LIBERTIES UNION FOUNDATION

NATIONAL LEGAL DEPARTMENT

125 Broad Street, 18th Floor

New York, NY 10004

Telephone: 213-549-2682

Facsimile: 213-549-2654

Attorneys for Petitioner

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

STUDENT AND PETITIONER,

vs.

LOS ANGELES COUNTY OFFICE OF EDUCATION AND LOS ANGELES
COUNTY PROBATION DEPARTMENT,

RESPONDENTS.

CASE NO. 2010080678

STIPULATED FINAL DECISION IN LIEU OF DUE PROCESS HEARING

(Proposed Order Filed Concurrently)

WHEREAS the parties have engaged in settlement negotiations to resolve the class action lawsuit filed by [Student] and two other students against Los Angeles County Office of Education and Los Angeles County Probation Department;

WHEREAS the above referenced matter is an inextricable part of [Student]'s class action lawsuit;

WHEREAS the parties have agreed that it is in their best interest to stipulate to findings and a remedial order to be issued by the Office of Administrative Hearings based on those findings;

This Stipulated Final Decision in Lieu of Due Process Hearing is entered into by and between [Student], on the one hand, and Los Angeles County Office of Education (LACOE) and Los Angeles County Probation Department (together "Respondents"), on the other hand, with reference to the following facts and findings:

RECITALS

1. [Student] is an eighteen year old student eligible for special education and related services under the category of "other health impairment ("OHI"). He also has auditory and visual processing disorders, memory difficulties, and visual-motore integration deficits. [Student] is a citizen and resident of Los Angeles County.

2. The Los Angeles County Office of Education ("LACOE") is the local education agency that operates the schools inside all Los Angeles County juvenile rehabilitation facilities and provides direct instruction to the students enrolled in those schools. Specifically, LACOE operates the school at the Challenger Youth Memorial Center ("Challenger School") in Lancaster, California. Respondent LACOE has its principal offices in Downey, CA.

3. From on or around October 29, 2007 through August 15, 2008, and from on or around February 12, 2009, through on or about April 7, 2010, [Student] attended schools run by Respondent LACOE. During those times, LACOE was the local educational agency charged by federal and state law with providing him with a free and appropriate public education.

4. The Los Angeles County Probation Department (“Probation”) is a public agency with headquarters in Downey, California. Probation’s Office of Juvenile Institutions Bureau operates three juvenile halls and 18 juvenile camps, including the six camps at Challenger, and is responsible for the care of youth detained in those facilities. As the caretaker charged with these youth’s wellbeing, Respondent Probation is responsible for, among other things: (1) designing and implementing treatment plans designed to assist youth in their transition back into society; (2) ensuring that LACOE, and any other educational agency that enters the facilities, provides the youth with a FAPE and otherwise complies with federal and state special education laws; and (3) executing their duties as a special education related service provider in compliance with applicable federal and state special education laws.

5. On August 17, 2010, [Student] filed a due process request with the Office of Administrative Hearings against Respondents, seeking compensatory education for various violations of his educational rights under federal and state laws.

6. During the two years of enrollment at Challenger prior to the filing of this action, [Student] alleges that he was not given the proper educational assessments and was denied a free and appropriate education. In addition, [Student] repeated a number of unnecessary classes that he had already passed and thus failed to graduate from high school this June, leaving him far behind his peers.

(THIS SPACE INTENTIONALLY LEFT BLANK. TEXT CONTINUES ON FOLLOWING PAGE)

WHEREFORE, it is stipulated by and between Student and Respondents as follows:

AGREEMENT

The parties agree to the following compensatory education services:

1. 600 hours of individualized instruction, which may be structured as credit recovery in courses Petitioner needs to complete to obtain his high school diploma or as CAHSEE prep classes. Respondent LACOE will identify a certified non-public agency to provide this instruction, such that LACOE can certify that the instruction provided satisfies the requirements for Petitioner to earn credits toward high school graduation; and Respondent LACOE will award Petitioner credits, including partial credits, where applicable, based on the services provided to Petitioner. If Petitioner completes sufficient credits through this process to satisfy Respondent LACOE's graduation requirements and satisfies all other relevant requirements under state law, then LACOE will award Petitioner a high school diploma.

2. 75 hours of transition services, including but not limited to job training, coaching, interviewing skills, and resume preparation.

3. Respondents will not be responsible for providing or funding transportation to Petitioner, or otherwise reimbursing Petitioner for any transportation costs associated with accessing the services described in paragraphs 1 and 2, except as follows:

Respondents will provide Petitioner with a bus pass to go to attend such services upon request, but if Petitioner does not utilize the services from the contracted non-public agency within the month that he is provided with a bus pass by Respondents, then the bus pass will not be renewed until such time as he demonstrates that he has made arrangements for

such services and has attended at least one session. Petitioner's Counsel and Respondents will endeavor to identify certified non-public agencies who provide services locally and can provide services in a location accessible to Petitioner.

4. Payment for the assessments completed by Carlos Flores and Bill Allen, which have not been paid to date, per the Interim Agreement in Casey A. v. Robles, No. CV 10-00192 (C.D. Ca.).

The parties further agree that Petitioner shall have two years from the date an order adopting this stipulation is entered to utilize the compensatory services specified above. Thereafter, any unused balance of hours shall expire, and Defendants shall not be required to pay for any additional compensatory services under this stipulation. This two-year period shall be tolled for the duration of any delay in provision of services to Petitioner that is solely attributable to Defendants or the Providers with whom they contract, and Petitioner and Class Counsel shall promptly notify Respondents of any issues related to interruption in services as soon as they are aware of such issues.

In light of the settlement agreement entered into between Petitioner and Respondents in Casey A. v. Robles, No. CV 10-00192 (C.D. Ca.), and the attorney's fees specifically provided for therein, the parties stipulate that Petitioner's counsel will not seek reimbursement for accrued fees and costs from the Office of Administration Hearings.

The parties further stipulate that, upon entry of an order adopting this stipulation, Petitioner will have satisfied the standard for exhaustion of administrative remedies under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. Respondents LACOE and Probation

further stipulate that they will not raise any defense of failure to exhaust in connection to any claims brought by petitioner in federal court under the above-referenced statutes or in connection with the settlement agreement entered into between Petitioner and Respondents in Casey A. v. Robles, No. CV 10-00192 (C.D. Ca.).

Dated: [Sept. 14, 2010]

By: _____ /s

Shawna L. Parks

Surisa E. Rivers

DISABILITY RIGHTS LEGAL CENTER

For Student and Petitioner

_____ /s

Mark Rosenbaum

David Sapp

ACLU Foundation of Southern California

For Student and Petitioner

_____ /s

Laura Faer

Benjamin Conway

Public Counsel Law Center

For Student and Petitioner

Dated: [Sept. 14, 2010]

_____ /s

Roger Granbo

Office of the County Counsel, County of Los Angeles

For Respondent Los Angeles County Probation Department

_____/s_____

Vibiana Andrade

General Counsel, Los Angeles County Office of Education

For Respondent Los Angeles County Office of Education