

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

FOLSOM CORDOVA UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2013040098

FOLSOM CORDOVA UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2013090197

ORDER FOLLOWING PREHEARING
CONFERENCE

On December 6, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Charles Marson, Office of Administrative Hearings (OAH). Student's Parents appeared on behalf of Student. Anne M. Sherlock, Attorney at Law, appeared on behalf of the Folsom Cordova Unified School District (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 the District's office, 1965 Birkmont Drive, Rancho Cordova, California 95742. It shall take place on December 16 through 20, 2013, and continuing day-to-day thereafter, Monday through Thursday, at the discretion of the ALJ. On December 16, 2013, the hearing shall begin at 1:30 p.m. and end at 5:00 p.m., and on the remaining days the hearing shall begin at 9:00 a.m. and end at 5:00 p.m., unless otherwise ordered.

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.

Student's Issues (Case No. 2013040098):

A. Did the District substantively fail to provide Student a free appropriate public education (FAPE) during the 2010-2011, 2011-2012, 2012-2013, and 2013-2014 school years (SYs) (unless otherwise noted) by failing to:

1. Develop a new individualized education plan (IEP) with proper eligibility classification, appropriate and measurable goals, services, accommodations and modifications;
2. Provide adequate speech and language services;
3. Provide an appropriate reading program;
4. Provide a resource specialist program;
5. Implement her outstanding IEP;
6. Provide adequate progress reports?¹

B. Did the District procedurally fail to provide Student a FAPE during the SYs 2010-2011, 2011-2012, 2012-2013, and 2013-2014 (unless otherwise noted) by:

1. Predetermining that Student was not eligible for, and should be exited from, special education (SYs 2010-2011 and 2013-2014 only);
2. Predetermining Student's IEPs;
3. Failing adequately to report assessment results (SY 2010-2011 only);
4. Denying Parents meaningful participation in the IEP process;
5. Failing to have a general education teacher present during the entirety of IEP team meetings (SYs 2010-2011 and 2011-2012 only);

¹ Several subissues set forth in Student's PHC statement have been eliminated on the ground that they are subsumed by other subissues. No substantive change is intended. Student's subissues 1.h., 1.i., 1.j., 1.k., 1.l and 4.t. are omitted as a result of their dismissal in the Order Denying in Part and Granting in Part District's Motion to Dismiss Issues, filed November 27, 2013. The remaining issues and subissues have been reorganized and renumbered.

6. Failing to provide Parents adequate prior written notice of its proposed actions to change the identification, placement, and/or provision of FAPE to Student, including but not limited to its proposals in SYs 2010-2011 and 2013-2014 to exit Student from special education;

7. Failing to timely convene an annual IEP team meeting (except in SY 2013-2014);

8. Failing to develop a new appropriate IEP for Student (SY 2011-2012 only)?

9. Failing to conduct a resolution session (SY 2012-2013 only)

10. Failing, in SY 20-13-2014, to provide teacher reports from teachers not present at the August 23, 2013 IEP team meeting;

11. Failing, in SY 2013-2014, to accurately report the August 23, 2013 IEP team meeting, failing to provide educational records requested by Parents, and falsifying and failing to amend Student's educational records; and

12. Failing, in SY 2013-2014, to place Student in the least restrictive environment (LRE) in her language arts class?

C. Is the two-year statute of limitations inapplicable because the District knowingly deceived Parents regarding Student's progress?

As resolutions, Parents seek an order that the District: 1) provide Student compensatory education in the areas of speech and language; 2) provide Student intensive individual, research-based reading, writing and math programs; 3) provide Student one hour a week of individual tutoring; 4) provide all related transportation; 5) conduct a facilitated IEP team meeting to develop an appropriate IEP for Student; and 6) place Student in the LRE in language arts class.

District's Issue (Case No. 2013090197):

Is Student eligible for special education and related services?

As a resolution, the District seeks an order that Student is not eligible for special education and related services.

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 5:00 p.m. on December 9, 2013, 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 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.

4. Witnesses.

a) 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.

b) Student has identified 26 witnesses to be called at the hearing, the District has identified 34 witnesses. Some of the witnesses are listed by both parties. In light of the fact that 4 and one-half days have been scheduled for the hearing, examination of the number of witnesses proposed would make it difficult to complete the hearing as scheduled. Therefore, at the beginning of the hearing, each party shall serve on the other party and on OAH a tentative witness list, identifying the witnesses the party intends to call, as opposed to witnesses the party may call depending on the flow of the hearing and the evidence. Each revised witness list shall contain an estimate of the length of each witness's direct examination testimony. Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for their testimony.

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 subordinate to the need for each witness to 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.

a. The District's motion to allow Caren Maxwell and Allison Stanton to testify by telephone was unopposed and is granted. At present no party intends to present any other witness by telephone.

b. A party seeking to present any witness by telephone shall move in advance for leave to do so; 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.

7. Electronic Recording of Hearing.

a. Audio Recording. At present no party intends to make an audio recording of the hearing. Any party that desires to make such a recording shall apply for leave to do so in advance from the ALJ and shall do so only on the 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, to avoid recording conversations while off the record; and 3) that operation of the party's recording mechanism will not be allowed to delay the hearing.

b. Video Recording. No party, witness or anyone else present may make any video recording of any part of the proceedings. Any person doing so shall be subject to sanctions.

8. Motions. At present no prehearing motions are pending or contemplated. Any motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not made prior to or during this prehearing conference.

9. 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. Any party seeking compensatory education shall provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

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

11. 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.

12. 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.

13. Hearing Open To the Public. At the request of Parents, the hearing will be open to the public. Witnesses will be excluded prior to their testimony except for Student's Grandmother and the District's representative.

14. Settlement. The parties are encouraged to continue their attempts 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. If a settlement is reached five days or fewer than five days before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact by telephone at (916) 263-0880. IF A FULL AND FINAL SETTLEMENT 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, AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY.

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.

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

IT IS SO ORDERED.

Dated: December 6, 2013

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings