

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ROSEVILLE CITY ELEMENTARY
SCHOOL DISTRICT.

OAH Case No. 2013100142

ORDER FOLLOWING PREHEARING
CONFERENCE

On May 30, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Joy Redmon, Office of Administrative Hearings. Nicole Jamison, Attorney at Law, appeared on behalf of Student. Colleen Villarreal, Attorney at Law, appeared on behalf of the Roseville City Elementary School District (Roseville). The PHC was recorded.

Based on discussion with the parties, the ALJ issues the following orders:

1. Hearing Dates, Times, and Location. The hearing shall take place at **1000 Darling Way, Roseville, CA 95678.**¹ It shall take place on June 4, 5, 10, and 11, and continue day-to-day, Tuesday through Thursday, thereafter at the discretion of the ALJ. On June 4, 2014, the hearing shall begin at 9:30 a.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. The issues below were discussed at the PHC and reworded for clarity:

¹ At a minimum for the hearing the 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 the District's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table. District shall ensure that all parties, witnesses, and the ALJ have drinking water and tissue available to them, and that the hearing room and other facilities that will be used during the hearing are accessible.

ISSUES

- Issue 1: Did Roseville deny Student a free appropriate public education (FAPE) during the 2011-2012, 2012-2013, and 2013-2014 school years by:
- a) terminating her physical therapy services on May 18, 2012, without an adequate assessment;
 - b) failing to provide appropriate aide services;
 - c) failing to provide appropriate measurable goals in all areas of need;
 - d) failing to provide appropriate speech and language therapy;
 - e) failing to adequately document health concerns;
 - f) failing to provide appropriate occupational therapy services;
 - g) failing to provide physical therapy services; and
 - h) failing to offer and provide extended school year services following the 2011-2012, 2012-2013, and 2013-2014 school years?
- Issue 2: Did Roseville procedurally deny Student a FAPE during the 2011-2012, 2012-2013, and 2013-2014 school years by:
- a) failing to make a clear offer of FAPE in the following IEP's of September 8, 2011, May 18, 2012, October 5, 2012, May 14, 2013, September 18, 2013, and April 25, 2014;
 - b) failing to provide an assessment plan within fifteen days of request for assessment made on May 14, 2013;
 - c) retaliating against the parents for asserting their rights; and
 - d) falsifying documents?²

² The ALJ ordered petitioner to identify on the first day of hearing the specific documents that are alleged to have been falsified.

PROPOSED RESOLUTIONS

- Resolution 1: Roseville shall provide Student with compensatory education in the form of individual tutoring, physical therapy, occupational therapy, speech and language, and self-help skills in an amount subject to proof at hearing.
- Resolution 2: Roseville shall provide Student with weekly physical therapy, occupational therapy, and individual speech and language therapy sessions.
- Resolution 3: Roseville shall provide Student with an adequately trained aide from a non-public agency, with clearly defined written responsibilities.
- Resolution 4: Roseville and Parents shall develop an open communication system.
- Resolution 5: Roseville shall be trained in the ethical responsibilities under the IDEA.
- Resolution 6: Roseville shall provide Student a change in placement and case managers.
- Resolution 7: Other relief deemed appropriate by the ALJ.

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 pages of a party’s exhibit binder shall be Bates-stamped or otherwise consecutively numbered. 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 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 will not be admitted into evidence at the hearing unless it is supported by a 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 witness not disclosed in the party's prehearing conference statement, except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

b) The parties are ordered to meet and confer and prepare a joint proposed witness schedule. The tentative witness schedule shall identify 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. Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for 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 will generally be limited to examining the witness to 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 party seeking to present a 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. Neither party requested telephonic testimony.

7. Electronic Recording of Hearing.

a. Audio Recording. At present, both parties intend to make an audio recording of the hearing. The following conditions apply to any recording: 1) that OAH's recording is the only official recording; 2) that the recorder 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) the 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. During the PHC, Roseville made an oral motion to dismiss issue 2(c) asserting that issues of retaliation are outside of the jurisdiction of OAH. Student is given until 3:00 p.m. on Tuesday, June 3, 014, to submit a written response. The ALJ will rule on the motion at the outset of the hearing. 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 and 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, and other noisemaking electronic devices shall be shut off 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 any special accommodation for any witness or party.

13. Hearing Closed To the Public. The hearing will be closed to the public.

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 LAST BUSINESS 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.

DATE: May 30, 2014

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings