

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

TWIN RIVERS UNIFIED SCHOOL
DISTRICT,

OAH Case No. 2014030894

TWIN RIVERS UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2014050203

ORDER FOLLOWING PREHEARING
CONFERENCE

On May 23, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Theresa Ravandi, Office of Administrative Hearings. Advocate Joanne Louise appeared on behalf of Parent and Student. Parent also appeared. Kyle Raney, Attorney at Law, appeared on behalf of Twin Rivers Unified School District (Twin Rivers). 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 Twin Rivers' district office located at 5115 Dudley Boulevard, McClellan, California 95652, on June 3-5 and June 9, 2014, and continue day to day, Monday through Thursday, as needed and at the discretion of the ALJ.¹ The hearing shall begin on June 3 and June 9, 2014, at 9:30 a.m., and the remaining days at 9:00 a.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

¹ At a minimum, the hearing room shall have four or more separate tables capable of being moved into a courtroom configuration with an electrical outlet near the ALJ's table. Twin Rivers shall ensure that all parties, including witnesses, and the ALJ have drinking water and tissue available to them during the hearing.

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 in a due process hearing are limited to those identified in the written due process complaint. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) The issues were discussed and clarified during the PHC, and are listed below.

TWIN RIVERS' ISSUES

Issue One: Does Twin Rivers' individualized education program (IEP) dated February 25, 2014, offer Student a free appropriate public education (FAPE) in the least restrictive environment?

Proposed Resolution: Twin Rivers seeks an order allowing it to implement the February 25, 2014 IEP without parental consent.

STUDENT'S ISSUES

Issue Two: Did Twin Rivers fail to offer Student an appropriate educational program for the 2014-2015 school year?

Issue Three: Did Twin Rivers deny Student a FAPE from March 24, 2012, through the present time by failing to offer and provide behavior support services?

Issue Four: Did Twin Rivers deny Student a FAPE from March 24, 2012, through the present time by failing to offer and provide kinesthetic training including physical therapy and support for Student's sensory needs?

Issue Five: Did Twin Rivers deny Student a FAPE during the 2013-2014 school year by failing to provide any home hospital instruction for a 13 week period during the fall of 2013?

Proposed Resolutions: Student requests that his program of daytime home hospital instruction continue along with weekly speech and language services, weekly physical therapy, and a reading program, and that Twin Rivers develop and implement a behavior support plan to target Student's aggression and improve his coping skills. Student seeks an order requiring Twin Rivers to annually reapply for a state permit to allow Mr. Don Lawrence to serve as Student's home hospital instructor through the twelfth grade.

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 a school 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 represent that they will serve their evidence binders on each other in compliance with Education Code section 56505, subdivision (e)(7), “at least” five business days prior to the hearing, no later than Tuesday, May 27, 2014. 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.

Twin Rivers added a 2014 functional behavior assessment report to its list of exhibits. Student added a May 19, 2014 letter from Tammy Forest and Parent’s written reply dated May 22, 2014. To the extent any exhibit may be construed as a confidential settlement communication, such proposed exhibit is to be maintained in a separate binder until the ALJ determines its admissibility.

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 the ALJ rules that it is admissible.

4. Witnesses. The parties shall informally meet and confer no later than close of business on May 29, 2014, to coordinate their witness production and schedules. At the commencement of the hearing, the parties will present their witness schedules, and the ALJ and the parties will discuss the witness schedules, including the length of time anticipated for examination of each witness and any scheduling issues for individual witnesses. 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. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available. Twin Rivers represents that it will make Mr. Lawrence available for hearing. Neither party shall be permitted to call any witnesses not timely disclosed except for good cause shown, and at the discretion of the ALJ.

Twin Rivers has identified 22 witnesses but does not intend to call all of these witnesses at hearing. Student intends to call Mr. Lawrence, Ms. Powles, Ms. Louise, Ms. Hollingsworth and Parent. Student no longer intends to call Dr. Wolfrey as a witness.

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 ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses’ testimony, to ensure that this matter is concluded within the time allotted, based upon the parties’ time estimates and the issues presented.

5. Order of Presentation of Evidence and Scope of Witness Examination. Each party bears the burden of proof as to its respective issues in this proceeding. Twin Rivers shall present its evidence first, followed by Student. Where Student and Twin Rivers intend to call the same person to testify, each party will examine the witness immediately after the

other party, so the witness will only need to be called to the witness stand once. 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. 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 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 unless all these requirements have been fulfilled.

Student's motion to allow Ms. Hollingsworth to testify telephonically is granted. Student shall provide Ms. Hollingsworth with a complete exhibit binder from each party, containing all of each party's exhibits, prior to the hearing, and Twin Rivers shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness.

7. Motions.

Audio Recording of the Hearing: It is within the discretion of the ALJ to permit the audio recording of a due process hearing. Neither party requested permission to audio record the hearing. Either or both parties will be permitted to audio record the hearing on 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; and 3) that operation of the party's recording mechanism will not be allowed to delay the hearing.

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 as to why the motion was not made prior to or during the prehearing conference of May 23, 2014.

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 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. 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. Student requested that Parent be provided with an interpreter to assist her with legal terminology during the time when Student's advocate is at the witness stand. This request was referred to OAH's Americans with Disabilities coordinator at the close of the PHC. Neither party anticipates the need for any other special accommodation for any witness or party.

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. 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 letters of withdrawal or the signature page of a 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.

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

IT IS SO ORDERED.

DATE: May 23, 2014

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings