

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ROSEVILLE JOINT UNION HIGH
SCHOOL DISTRICT.

OAH Case No. 2014070417

ORDER FOLLOWING PREHEARING
CONFERENCE

On August 18, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Theresa Ravandi, Office of Administrative Hearings. Daniel Shaw, Attorney at Law, appeared on behalf of Parent and Student. Heather Edwards, Attorney at Law, appeared on behalf of Roseville Joint Union High School District (Roseville). The PHC was recorded.

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

1. Hearing Dates, Times, and Location. Roseville filed a motion for a change in venue from its district office to Challenge High School. Student did not oppose this change in venue so long as Roseville ensures that no individuals are present in the rooms adjacent to the hearing room given the lack of sound-proofing and a one way mirror which allows individuals to see into the proposed hearing room. Ms. Edwards represented that Roseville will ensure that no individuals are present in these adjacent rooms and, in addition, that any windows in the hearing room are covered to maintain Student's privacy. On the condition that these precautions are taken, Roseville's motion to change venue is granted.

The hearing shall take place at **Challenge High School located at 2501 Woodcreek Oaks Boulevard, Roseville, California 95747, on August 26, 2014, at 9:30 a.m., August 27-28, 2014, at 9:00 a.m., September 9, 2014, at 9:30 a.m., and September 10, 2014, at 9:00 a.m.**¹ The hearing shall continue day to day, Monday through Thursday as needed at the discretion of the ALJ.

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. Roseville 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 in compliance with the Americans with Disabilities Act.

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 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.

Issue One: Did Roseville deny Student a free appropriate public education during the 2012-2013 school year until May 2013, by failing to assess Student pursuant to its child find obligations?

Issue Two: Did Roseville deny Student a FAPE following its May 2013 initial assessment of Student by failing to find her eligible for special education and related services in the categories of other health impairment and/or emotional disturbance?

Issue Three: Did Roseville deny Student a FAPE during the 2012-2013 school year by failing to:

- a. conduct a comprehensive psycho-educational assessment in that it failed to assess Student's executive functioning; and
- b. conduct an educationally related mental health services evaluation?

Issue Four: Did Roseville deny Student a FAPE during the 2013-2014 school year by failing to:

- a. assess Student's executive functioning; and
- b. conduct an educationally related mental health services evaluation?

Proposed Resolutions: Student seeks an order that Roseville denied her a FAPE and failed to adequately assess her during the 2012-2013 through 2014-2015 school years including extended school years. Roseville shall fund or reimburse an independent psycho-educational evaluation including executive functioning and social-emotional functioning, and an independent mental health assessment. Roseville shall fund the attendance of the independent assessors at an IEP team meeting to review the assessments and implement the recommendations. Roseville shall provide Student with compensatory education and/or reimburse for the same in the area of counseling. Roseville shall provide Student with a credit recovery program. As compensatory education, Roseville shall provide Student with a day treatment program or residential treatment program that provides dialectal behavioral therapy, high level academics, and credit recovery, including costs for transportation and

family therapy. Roseville shall place Student in a day or residential treatment program with a nonpublic school and fund transportation and costs for family therapy.

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 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 have stipulated to a late exchange of evidence binders which are otherwise required to be exchanged five business days prior to hearing pursuant to Education Code section 56505, subdivision (e)(7). The parties stipulate that they will exchange their evidence by Friday, August 22, 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.

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. The parties shall informally meet and confer 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. Neither party shall be permitted to call any witnesses not timely disclosed except for good cause shown, and at the discretion of the ALJ.

Student has identified 18 witnesses and Roseville has identified 12 witnesses, many of whom will be called by both parties. Student does not intend to call all of her identified witnesses. 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. Student bears the burden of proof and shall present her evidence first, followed by Roseville. Where Student and Roseville 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. At present, neither party anticipates the need for telephonic testimony.

7. Motions.

Audio Recording of the Hearing: Student and Roseville requested permission to audio record the hearing. It is within the discretion of the ALJ to permit the audio recording of a due process hearing. 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.

Student's Anticipated Motion to Amend Complaint: At present Student anticipates she may be filing a motion to amend her complaint depending on the outcome of an individualized education program team meeting calendared for August 19, 2014. An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).) **If Student seeks to amend her complaint, she is hereby ordered to file a motion to amend along with a proposed amended complaint by 2:00 p.m. on August 20, 2014. Roseville will then have until 9:00 a.m. on August 21, 2014, to respond to Student's motion to amend. The ALJ will issue an order on the motion on August 21, 2014.**

No other prehearing motions are pending or contemplated. Any motion filed after this date, other than Student's anticipated motion to amend, 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 August 18, 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. At present neither party anticipates the need for special accommodation for any witness or party, or for interpreter services.

12. Hearing Closed To the Public. At the request of Student, the hearing will be closed 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 OAH receives a letter of withdrawal or request to dismiss the case, or a signature page of a settlement agreement withdrawing the matter. 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.

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

IT IS SO ORDERED.

DATE: August 19, 2014

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings