

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

ROSEVILLE JOINT UNION HIGH
SCHOOL DISTRICT.

OAH Case No. 2015040109

ORDER FOLLOWING PREHEARING
CONFERENCE AND GRANTING
CONTINUANCE OF FIRST DAY OF
HEARING

On June 5, 2015, a telephonic prehearing conference was held before Administrative Law Judge Theresa Ravandi, Office of Administrative Hearings. Daniel Shaw, Attorney at Law, appeared on behalf of Parents and Student. Heather M. Edwards, Attorney at Law, appeared on behalf of Roseville Joint Union High School District. The PHC was recorded.

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

1. Joint Request to Continue First Day of Hearing. This hearing is scheduled to commence on Monday, June 8, 2015. At the start of the PHC, the parties represented that an agreement in principal had been reached and a settlement agreement was being circulated for signature. Therefore, the parties requested a one-day continuance to allow them time to finalize the agreement on Monday, June 8, 2015.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

The parties established good cause for a one-day continuance. The matter is continued to June 9, 2015, at 9:30 a.m.

2. Hearing Dates, Times, and Location. The hearing shall take place at Challenge High School located at 2501 Woodcreek Oaks Blvd., Roseville, California, 95747, on June 9, 2015, at 9:30 a.m., June 10-11, 2015, at 9:00 a.m., June 16-17, 2015, at 9:00 a.m.,

and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ.¹ Roseville shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.

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.

3. 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*²: Did Roseville deny Student a free appropriate public education during the 2014-2015 school year, including extended school year, by:

- a. failing to offer an appropriate placement;
- b. failing to offer adequate, measurable goals in all areas of need as follows:
 - i. coping skills;
 - ii. anxiety;
 - iii. social-emotional functioning; and
 - iv. behavior;
- c. failing to offer appropriate mental health services adequate to meet Student's needs;
- d. failing to offer appropriate accommodations and supports;

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 available to them.

² By Monday, June 8, 2015, Student shall provide Roseville notice of how his mental health services were deficient; what accommodations and supports should have been offered; and what assistive technology was required. Student will inform the ALJ of these specifics at the start of hearing.

- e. failing to offer behavior services including a behavior support plan and self-monitoring system;
- f. failing to offer an adequate transition plan and services by failing to develop goals or provide services in the following areas:
 - i. job readiness;
 - ii. independent living;
 - iii. community access; and
 - iv. life skills;
- g. failing to offer assistive technology; and
- h. failing to offer counseling during the extended school year?

Issue Two: Did Roseville deny Student a FAPE by committing the following procedural violations:

- a. failing to consider a continuum of placements at the February 6, 2015 IEP team meeting;
- b. failing to timely complete assessments pursuant to the assessment plan signed on October 23, 2014;
- c. failing to convene a timely IEP team meeting as follows:
 - i. within 30 days of his enrollment in Roseville; and
 - ii. within 30 days of Parent request on August 27, 2014;
- d. failing to timely offer an IEP by September 26, 2014;
- e. failing to make a clear written offer of FAPE as follows:
 - i. failing to clearly specify the type of specialized academic instruction and counseling services at the October 13, 2014 IEP team meeting; and
 - ii. failing to clearly specify the frequency and amount of counseling services at the February 6, 2015 IEP team meeting?

Issue Three Did Roseville deny Student a FAPE during the 2014-2015 school year, including extended school year, by failing to assess him in all areas of suspected disability as follows:

- a. failing to conduct an assessment of his adaptive needs;

- b. failing to conduct a speech and language assessment including social skills;
- c. failing to conduct a transition assessment; and
- d. failing to conduct an assistive technology assessment?

Proposed Resolutions: Student seeks an order that Roseville denied him a FAPE during the 2014-2015 school year including extended school year and failed to appropriately assess him; that Roseville fund or reimbursement independent educational evaluations in the areas of 1) adaptive skill functioning; 2) speech and language including social skills; 3) transition; and 4) assistive technology needs; that Roseville convene an IEP team meeting to incorporate the recommendations of the independent assessors and fund the attendance of the assessors; that Roseville excuse Student's absences and discontinue truancy proceedings; that Roseville provide compensatory services including tutoring, behavior services, transition services, cognitive behavioral therapy, counseling and social skills; that Roseville reimburse educational expenses including placement at Rogers, private tutoring, cognitive behavioral therapy and other mental health services, and transportation; and that Roseville place Student in a small class with staff familiar with the needs of students with anxiety and obsessive compulsive disorder, with weekly therapy and weekly group cognitive behavioral therapy and transportation.

4. 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 are to comply with Education Code section 56505, subdivision (e)(7), and exchange their evidence at least five business days prior to hearing unless they stipulate otherwise. 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 timely exchanged shall not be admitted into evidence at the hearing unless the ALJ rules that it is admissible.

5. Witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available. 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. Neither party shall be permitted to call any witnesses not timely disclosed except for good cause shown and at the discretion of the ALJ.

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. Student identified 20 witnesses. Roseville identified 14, 8 of whom are shared, for a total of 26 witnesses. The parties are ordered to meet and confer by June 8, 2015, as to the schedule of witnesses and projected length of direct and cross examination.

At the start of the hearing, the parties shall present a final, joint schedule of witnesses with time estimates. 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 issue presented.

6. Order of Presentation of Evidence and Scope of Witness Examination. Student bears the burden of proof and shall present his 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.

7. 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, unless the opposing party has stipulated that the witness may appear by telephone. 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 Dr. Lake to testify telephonically was unopposed and was granted. Student shall provide Dr. Lake with a complete exhibit binder from each party, containing all of each party's exhibits, prior to the hearing, and Roseville shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness.

8. Electronic Recording of Hearing. 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. Failure to comply with these conditions may result in a revocation of this order which grants the parties permission to make an audio recording of the hearing.

9. Motions. Neither party indicated an intent to file additional pretrial motions. Any further 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 June 8, 2015.

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. 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.

13. Special Needs and Accommodations. A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk at (916) 263-0880, or the OAH ADA Coordinator at OAHADA@dgs.ca.gov or 916-263-0880, as soon as the need is made known. Additional information concerning a request for reasonable accommodation is available on OAH's website at <http://www.dgs.ca.gov/oah/Home/Accommodations.aspx>.

At present neither party anticipates the need for special accommodation for any witness or party, or for interpreter services.

14. Hearing Closed To the Public. At the request of Student, the hearing will be closed to the public.

15. 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 the letter of withdrawal or signature page of the 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.

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

IT IS SO ORDERED.

DATE: June 5, 2015

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings