

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

RIVERSIDE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021090903

ORDER DENYING MOTION FOR PRELIMINARY HEARING

DECEMBER 2, 2021

On November 17, 2021, Riverside filed a motion requesting a preliminary hearing to determine the "standard of proof, controlling law and therefore the evidence that will be relevant to the resolution of this Action." On November 18, 2021, Student filed an opposition to the request for a preliminary hearing. The opposition was not considered as the Office of Administrative Hearings, or OAH, did not receive notice that it was served on Riverside. The proof of service notes only service through the secure filing transmission system or SFT. Transmission through the SFT gives notice only to OAH and does not constitute service on other parties.

The issues in this case involve alleged denials of a free, appropriate public education, or FAPE, to Student from March 2020 through the date of the filing of the request for due process. The issues include allegations that Riverside denied Student a

FAPE during distance learning resulting from the Covid-19 pandemic. Riverside asserts, "it appears that Student is seeking to make RUSD responsible for the closure of schools due to a world-wide pandemic caused by the COVID-19 virus and its variants ... It would make no sense to hold a school district liable for a violation of federal law, when the school district was not able to provide all of the services and placement called for by an IEP when the school district was closed due to forces beyond its control." Riverside argues that such a determination would "have a profound effect on the amount and nature of the evidence presented at hearing," thus, this motion.

A preliminary hearing is not required to determine the standard of proof and controlling law applicable in a special education case. This case does not differ from any other special education case, which is controlled by the Individuals with Disabilities' Education Act and regulations, and California special education laws and regulations. (20 U.S.C. § 1400 *et seq.*; Ed. Code § 56000 *et seq.*) Nor would the applicable preponderance of the evidence standard of proof be changed. As with any special education hearing, any relevant evidence that is not deemed cumulative will be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, subject to the Administrative Law Judge's authority to set a reasonable length of

time on the hearing. (Cal. Code Regs., tit. 5, § 3082 subd. (b); Education Code, section 56505.1, subdivision (h).)

Riverside's motion for a preliminary hearing is denied.

IT IS SO ORDERED.

Penelope S. Pahl

Penelope S. Pahl

Administrative Law Judge

Office of Administrative Hearings