BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ETIWANDA SCHOOL DISTRICT AND CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2020120161

SUPPLEMENTAL ORDERS ISSUED DURING DUE PROCESS HEARING AND CONTINUING DUE PROCESS HEARING

JUNE 8, 2021

On June 8, 2021, Administrative Law Judge Adrienne L. Krikorian, Office of Administrative Hearings, called the due process hearing in this matter to order. Attorney Sheila Bayne represented Student. Parent attended on Student's behalf. Attorney Sundee Johnson represented Etiwanda School District and Chaffey Joint Union High School District. Kelly Whelan, Elizabeth Ford, and Royal Lord attended on behalf of the respondent school districts and West End Special Education Local Plan area.

BRIEFING REGARDING ISSUE 1

At the start of hearing, the parties discussed the issues for hearing. Pursuant to Student's complaint filed on December 1, 2020, Student alleges that Etiwanda and Student entered into a final Settlement Agreement dated June 7, 2019. Student alleges Etiwanda agreed in the Settlement Agreement to amend Student's then-current individualized education program, called IEP, with certain terms from the Settlement Agreement. Student alleges Etiwanda failed to ensure that Etiwanda forwarded Student's most recent implement IEP, and a copy of the June 9, 2019 Settlement Agreement, to Chaffey as part of Student's transfer from middle school to high school before Student transferred to Chaffey at the start of the 2019-2020 school year. Student alleges Etiwanda's failure to ensure that Chaffey knew about the alleged amended IEP and Settlement Agreement resulted in Etiwanda denying Student a free appropriate public education, called FAPE.

Issue 1, as agreed upon by the parties at the prehearing conference in this matter, alleges that Etiwanda School District denied Student a FAPE by failing to ensure that Chaffey was aware of Student's "transition" or "matriculation" IEP before Student transferred to Chaffey at the start of the 2019-2020 school year. Student's attorney clarified at hearing that Student's IEP team met in May 2019 to develop an IEP for high school. Parent did not sign that IEP. Parent and Etiwanda signed a settlement agreement on June 9, 2019, which the parties intended would amend Student's May 2019 IEP. Student's counsel also clarified that Student's last signed and implemented IEP at that time was the November 27, 2018 IEP, as amended in December 2018 and April 2019. Student's counsel explained Student was alleging that Etiwanda should have ensured that Chaffey was aware of the Settlement Agreement, for the purpose of

ensuring that certain terms of the Settlement Agreement the parties intended to amend Student's last agreed upon IEP were implemented by Chaffey.

Based upon the issue as presented by Student's counsel, the parties are ordered to brief whether 1) OAH has jurisdiction over the enforcement of the terms of the Settlement Agreement between Etiwanda and Student, and 2) whether Etiwanda is a proper party to this action. Specifically, the parties shall address the following, as an offer of proof:

a) Does the June 2019 Settlement Agreement between Parent and Etiwanda have a confidentiality clause? If so, does the Settlement Agreement include specific language as to whether the Settlement Agreement was meant to be shared with another school district?

b) Did the Settlement Agreement have language that the parties agreed made the Settlement Agreement enforceable as a stand-alone IEP, or an amendment to the IEP that was intended to deliver FAPE, at Chaffey?

c) Did the Settlement Agreement include a waiver of claims in favor of Etiwanda? If so, what time period was included in the waiver of claims?

d) When did Student officially enroll in Chaffey and when did Student disenroll from Etiwanda?

e) Was Chaffey a party to the June 2019 Settlement Agreement or did the Settlement Agreement have any provision that Etiwanda would provide a copy of the Settlement Agreement to Chaffey?

f) Did Student have an IEP signed by Parents that addressed Student's transition from middle school to high school? Did Chaffey participate in the IEP process? Did the

Etiwanda IEP team or anyone else representing Etiwanda inform Chaffey of the terms of the Settlement Agreement?

g) What was the date of Student's operative IEP on the first day of the 2019-2020 school year? Were the Settlement Agreement terms included in the operative IEP intended to transfer to Chaffey?

h) Does the applicable SELPA have policies and procedures over the normal course of business to share educational records between middle school and high school for students making the transition? If so, what is the process? Under what authority is that process administered?

i) On what legal authority is Student relying to establish that Issue 1 of the complaint is a FAPE claim under the jurisdiction of OAH and not a compliance issue that should be brought before CDE?

The parties shall accompany their brief with an offer of proof, that may be, in part, in the form of one or more declarations under penalty of perjury. The parties may refer to proposed authenticated hearing exhibits, with the understanding that those exhibits will be considered by the ALJ at this time solely for the purpose of determining whether OAH has jurisdiction over Issue 1, until hearing recommences.

The parties shall submit briefs of no more than ten pages, in addition to supporting declarations, citing to authority as to 1) whether OAH has jurisdiction over the terms of the Settlement Agreement, and 2) whether Etiwanda is a proper party to this action. Parties shall cite to authority from title 20 U.S.C. 1400 et. seq., 34 Code of Federal Regulations subpart 300.1 et seq, and related California statutes, and applicable case law, that renders Student's Issue 1 a FAPE claim as opposed to a compliance claim that should be decided by the California Department of Education.

Briefing shall be filed with OAH and served on the opposing party no later than 10:00 a.m. on June 8, 2021. Parties shall notify the OAH case manager immediately after the briefs are filed. The ALJ will rule on the issue of the viability of Issue 1 as a FAPE claim before hearing resumes on Thursday June 9, 2021.

STUDENT'S REQUEST FOR JUDICIAL NOTICE

Student filed a request for Judicial Notice on June 1, 2021, accompanied by five exhibits. Student also uploaded the Request and its exhibits to Caselines, as Student's hearing exhibit S43.

OAH considers requests for Official Notice under Government Code section 11515. In reaching a decision official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the agency's special field, or of any fact which may be judicially notices by the courts of the State.

Here, Student has requested judicial notice of a previous OAH stay put order, a previous OAH Decision, California Senate Bill 98, and two general orders issued by California Governor Gavin Newsome. The previous OAH order and Decision are not appropriate for official notice and are not binding on OAH. Senate Bill 98 consists of 95 pages of amendments to a variety of California statutes, and is not appropriate for official notice. The Governor's orders are available to the public and are not appropriate for judicial or official notice.

The Request for Judicial and or Official Notice is denied. The parties' written closing arguments may rely on any persuasive legal authorities they choose to offer for the ALJ's consideration before submission of the case for decision.

EXHIBITS

First, numerous duplicate exhibits have been uploaded. To ensure minimal confusion, parties shall meet and confer before the first witness is called, they shall eliminate duplicate exhibits from one of the parties' exhibit sections where feasible, and they shall provide the ALJ with a list of exhibits that are withdrawn when hearing resumes.

Second, Student's uploaded exhibits do not comply with the PHC order. The exhibits are disorganized, with place holders, missing exhibits with title sheets, etc. The exhibit labels include commentary that is noncompliant with the PHC Order. Student identified one exhibit as "Student's entire educational file" which does not comply with the "single document/single exhibit" order in the PHC Order.

Student shall therefore comply with the directives in the PHC Order regarding exhibits as follows. Student shall reorganize and relabel Student's table of contents and exhibit titles consistent with the PHC Order. Student shall separately upload, in chronological order, into a new section in Caselines identified as Student's Corrected Exhibits, one document per exhibit, labeled only with the respective exhibit number, date, and title of document. Emails may include the name of recipient and sender. Student shall leave no blanks for "reserved" exhibits.

Student may upload only those documents that were previously uploaded and disclosed to the respondent districts on the initial exchange date. Student shall not upload any exact duplicates of District's exhibits, and Student shall remove Student's Request for Judicial Notice, and any exhibits attached to Student's Judicial Notice. Student shall remove exhibits S40, S56, and 57, referring to news conferences and bulletins, and a settlement agreement unrelated to Student or the issues in this case.

Student shall not upload "Student's entire file," identified in S58, but may upload specifically identified portions of the educational file as separate exhibits, if needed. Student shall also upload an updated and accurate Table of Contents, labeled "Student's Corrected Table of Contents."

Student shall upload documents no later than noon on June 9, 2021. The respondent districts shall have until 4:30 p.m. on June 10, 2021, to review Student's newly uploaded exhibits and shall note any documents that were not included in Student's original upload. Those will be discussed with the ALJ when hearing resumes.

Student shall not upload any document that Student did not upload during the initial exchange of documents whether such document was identified in Student's original table of contents, unless the responding districts stipulate that they have received such documents, or had those documents in their possession, at least five business days before June 8, 2021. Student may introduce at hearing any documents not previously uploaded, or stipulated to by the respondent districts, if needed, and the respondent districts will have the opportunity to object as to timeliness and or relevance.

If Student fails to comply with this Order, OAH will issue an order to show cause re: sanctions or shifting of costs based on failure to comply with OAH orders and the resulting delay of the hearing caused by such noncompliance.

CONTINUANCE OF HEARING DATES

The due process hearing is continued to and shall resume on Thursday, June 10, 2021 at 9:30 a.m., and shall continue day to day as determined by the ALJ. The parties shall ensure they and their respective witnesses are available on June 15, 16, 17, and June 18, if needed.

Caselines will be locked for further uploads at 4:45 p.m. on June 9, 2021, unless otherwise ordered by the ALJ. Parties shall upload to Caselines a revised joint schedule of witnesses, in compliance with the PHC Order, when directed to do so by the ALJ after hearing resumes on June 10, 2021.

IT IS SO ORDERED.

Adrienne L. Krikorian

Adrienne L. Krikorian
Administrative Law Judge
Office of Administrative Hearings