BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. SACRAMENTO CITY UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2013100405
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH CASE NO. 201301109 ORDER FOLLOWING PREHEARING CONFERENCE

On February 14, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Deidre L. Johnson, Office of Administrative Hearings (OAH). Attorney Daniel R. Shaw appeared on behalf of Student and Parents (Student). Attorney Daniel A. Osher appeared on behalf of the Sacramento City Unified School District (District). The PHC was recorded.

Based on discussion with the parties, the following order is issued:

1. Hearing Dates, Times, and Location: The hearing dates are confirmed. **The hearing shall begin at 9:30 a.m. on Tuesday, February 25, 2014. Thereafter, the hearing shall continue at 9:00 a.m. on February 26 and 27; at 1:30 p.m. on Tuesday, March 4, at 9:00 a.m. on March 5 and 6; at 9:30 a.m. on March 11, and at 9:00 a.m. on March 12 and 13, 2014, unless otherwise ordered.** The parties are directed to complete the hearing by close of business on March 13, 2014, or establish good cause why further hearing time is necessary. The hearing shall be held at the District's offices at 5735 47th Avenue, Sacramento, California 95824.[1]

[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, and a speaker telephone for telephonic witnesses. The District shall ensure that all parties and the ALJ have drinking water and tissue available to them during the hearing.

2. Notice to Witnesses: The parties shall immediately notify their witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall use good faith efforts to make witnesses under its control reasonably available to the other party without need for a subpoena. A witness will not be regarded as unavailable for purposes of showing good cause to continue the hearing if the witness has not been properly notified of the hearing date or properly subpoenaed, as applicable.

3. Issues: The issues for hearing are limited to those alleged in the parties' respective requests for due process (complaint). The issues were discussed during the PHC, and are reframed and clarified below.[2]

Student's Issues:

Issue 1: For the 2013 extended school year and the 2013-2014 school year, did District fail to conduct an appropriate psychoeducational assessment of Student's needs by:

(a) Failing to assess the amount of time Student missed school due to psychiatric hospitalization and other mental health crises; and

(b) Disregarding the recommendations of private mental health treatment providers?[3]

Issue 2: For the 2013 extended school year and the 2013-2014 school year, did District deny Student a free appropriate public education (FAPE) by:

(a) Offering an inappropriate educational placement in her individualized education program (IEP), including failing to offer placement in a residential treatment program;

(b) Failing to offer or provide adequate academic instruction;

(c) Failing to develop and offer an appropriate individual transition plan;

[2] 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 have been reframed and clarified for consistency with the applicable law but have not been substantively changed or amended.

[3] As discussed during the PHC, Student's Issue 1 is limited to the two discrete challenges to District's assessment listed in her complaint. Student has a right to move to amend her complaint subject to the applicable legal requirements.

(d) Failing to offer appropriate mental health therapy; and/or

(e) Failing to offer any medication management?

Issue 3: Beginning with the 2013 extended school year, did District procedurally deny Student a FAPE by having a policy and practice of refusing to place students in residential treatment as part of the IEP process such that District predetermined Student's IEP placement?

District's Issue:

Issue 4: Did District conduct a legally compliant and appropriate triennial assessment of Student in September 2013?

Proposed Resolutions and Defenses*:* The parties are directed to Paragraph 12 of this order regarding evidence for proposed remedies.

4. Exhibits: Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties' exhibits shall be pre-marked using numbered tabs and accompanied by a detailed exhibit list. Student's **exhibit list** shall identify each exhibit by number and the designation "S" (e.g., S1), and the District's **exhibit list** shall identify each exhibit by number along with a "D" (e.g., D1). Any document over five pages in length shall be internally paginated. Each exhibit binder shall contain a detailed table of contents or list. Each party shall serve an exhibit binder containing its respective exhibits and list on the other party not less than five business days prior to the start of the hearing.[4]

At the hearing, the parties shall supply an additional exhibit binder containing their respective exhibits and lists for use by the ALJ, and another exhibit binder for use by the witnesses. In the event of duplicate exhibits, the most legible version will be used, unless otherwise ordered. The parties shall not serve exhibits on OAH prior to the hearing.

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 may not be admitted into evidence at the hearing unless it is supported by a declaration under penalty of perjury, and the ALJ rules that it is admissible.

5. Witnesses: **By close of business on Thursday, February 20, 2014, the parties shall informally meet and confer to coordinate their witness production and schedules for the hearing, including, but not limited to the identification of District witnesses Student may request for the first two days of hearing. At the commencement of the hearing, the parties will present their witness schedules. T**he ALJ and the parties

[4] Education Code section 56505, subdivision (e)(7).

will discuss the witness schedules, including the length of time anticipated for examination of each witness and any scheduling issues for individual witnesses. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for any witness's testimony. 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 shall manage the number of witnesses so that the party's evidence will be presented within its approximate allocation of 50 percent of the total hearing time.

The parties shall proceed efficiently in their questioning of witnesses and shall narrow their witness lists and their questions to witnesses to avoid unnecessary or duplicative testimony. The parties should bear in mind that evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear.

At the present time, Student intends to call the following 20 witnesses from her PHC statement list of 60 witnesses: Mother; Father; Roxanna Summer (Choice Charter school teacher); Irene Aksenoc (charter school teacher); Kristin O'Brien (charter school teacher); Joette Hayden (Falcon Ridge Ranch principal); Sara Williams (Sierra School teacher); Janine Hughes (Sierra School director); Tara Peterson (therapist); Christie Galela (transportation); Cindy Swindle (District program specialist); Rebecca Bryant (District special education director); Sara Pieschl (school psychologist); Maria Lopez (social worker); Jeff Cuneo (school board president);[5] Dr. Paula Solomon (clinical psychologist); Dr. Dan Sanderson (clinical psychologist); Dr. Carolle Bell (Falcon Ridge clinical director); Paula Adams (Kaiser social worker); and Hani Bongarden (Edgewood social worker).

At the present time, District intends to call the following 13 witnesses from its PHC statement list of 24 witnesses: Rebecca Bryant (District special education director); Jacki Glasper (program specialist); Cindy Swindle (District program specialist); Sara Pieschl (school psychologist); Maria Lopez (social worker); Eric Hernandez (behavior specialist); Tara Peterson (therapist); Janine Hughes (Sierra School director); Brittany Auernig (teacher); Sarah Williams (teacher); one representative from Learning Solutions (either Megan Minnema, Monica Lopez, or Alilssa Rife); one high school teacher (Keith Sabini or Denis Herlehy); and Gayle Javanifard (charter school).

6. Telephonic Testimony: Whether a witness may appear by telephone is a matter within the discretion of the ALJ, on specified terms and conditions. (Cal. Code Regs., tit. 5 § 3082, subd. (g).) Student's request for the telephonic testimony of certain witnesses was granted during the PHC and District did not object. The party requesting the telephonic testimony 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 testimony of the witness. In addition, if the request is granted, the District shall ensure that the hearing room has a speaker telephone with adjustable volume control and a long telephone cord, so that the

[5] District does not agree to voluntarily produce Mr. Cuneo at hearing without a subpoena; however the attorneys for District will accept service of a subpoena on his behalf.

telephone can be placed close to all parties to ensure the ability to hear and record the testimony of the witness and for the witness to hear objections and rulings.

7. Order of Presentation of Evidence and Scope of Examination: Student shall produce her evidence first. Where Student and District 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 unless otherwise ordered.

8. Open Hearing: Consistent with Student's request, the hearing shall be open to the public.

9. Motions: During the PHC, the following pending motions were discussed, and ruled upon or deferred as follows:

(a) Student's Motion for a Continuance:

On February 14, 2014, Student filed a motion to continue the hearing in this matter on the grounds that Dr. Sanderson will not complete his psychological assessment of Student in time for the hearing. District has the right to file a written response and the parties agreed to a shortened briefing schedule. **District will file a response by 5:00 p.m. on February 14; and Student may file one reply by 5:00 p.m. on Tuesday, February 18, 2014 (as OAH is closed on February 17, 2014, for a state holiday).** OAH will thereafter rule on the motion.

(b) Student's Motion to Quash District's Subpoena Duces Tecum (SDT) to Falcon Ridge:

On February 7, 2014, Student filed a motion to quash District's SDT for records from the Falcon Ridge residential program. On February 12, 2014, District filed an opposition claiming Student does not have standing to make the motion. OAH will rule on the motion by separate order.

(c) District's Motion to Quash Student's SDT for District records:

On February 12, 2014, District filed a motion to quash Student's SDT for specified District records. As to the request for assessment protocols, Student has received the records and withdraws that portion of her SDT. **As to the request for District emails that may pertain to Student and constitute student records, Student may file one response by close of business on Tuesday, February 18, 2014. The** ALJ may rule on the motion in advance of the hearing or determine that evidence is required and defer ruling on the motion until the hearing, based on presentation of competent evidence supporting and/or opposing the motion.

(d) Student's Motions to Quash District's SDT's to Parents

On February 10, 2014, Student filed two motions to quash District's SDT's directed to Father and Mother individually. On February 12, 2014, District filed an opposition. On February 12, 2014, Student withdrew those motions. On February 13, 2014, Student re-filed the motions. District's request for a one-day extension within which to file a reply was granted. District may file one response by close of business on February 20, 2014. OAH will thereafter rule on the motion.

Any other 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 this PHC.

10. Special Needs and Accommodations: No special accommodations were requested during the PHC or ordered.

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 electronic devices shall be turned off or set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ. Recording the hearing is not permitted without the permission of the ALJ. Student requested permission to record the hearing, District agreed and the request was granted, subject to the ALJ's directions at hearing.

12. Compensatory Education/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. Any party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

13. Settlement: The parties are encouraged to negotiate 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. If a settlement is reached five business days or fewer before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact during business hours by telephone at **(916) 263-0880.**

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. IF A FULL AND FINAL SETTLEMENT IS REACHED AFTER 5:00 P.M. ON THE LAST BUSINESS DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT **(916) 274-6035,** AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY.

If a settlement agreement has been executed but is subject to approval of a school board, the parties may file a motion for OAH to vacate the hearing dates and set a telephonic status conference for a date following board approval. OAH will check for messages the evening prior to the hearing and the morning of the hearing.

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

DATE: February 14, 2014

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings