BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ROSEDALE UNION ELEMENTARY SCHOOL DIST.	OAH CASE NO. 2013080692 ORDER FOLLOWING PREHEARING CONFERENCE

On October 7, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Robert Helfand, Office of Administrative Hearings (OAH). Student's mother appeared on behalf of herself and Student (Student). Darren J. Bogie, Attorney at Law, appeared on behalf of the Rosedale Union Elementary School District (District). The PHC was not recorded.

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

1. Hearing Dates, Times, and Location. On October 4, 2013, Student filed a motion to continue the hearing, compel production of records pursuant to a September 25, 2013 subpoena duces tecum (SDT), and to amend the complaint. As to the motion for continuance, Student contends that she requires additional time to prepare for hearing including time to receive the documents requested in the SDT. On October 4, 2013, the District filed its opposition. Oral argument was presented. There being good cause demonstrated, Student's motion to continue the due process hearing is GRANTED.[1]

The hearing shall take place on **October 29, 2013 through October 30, 2013**, and shall continue thereafter on dates determined by the ALJ, at the offices of the Rosedale Union School District located at **2553 Old Farm Road, Bakersfield, CA 93312**. The hearing shall begin at 1:00 p.m. the first day of the hearing and at 9:30 a.m. all other days unless otherwise ordered.

A second telephonic PHC will be held on Friday, **October 25, 2013,** at 1:00 pm.

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

[1] Student's motions to amend the complaint and for production of documents are discussed later in this order.

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 at the due process hearing are listed below:

(A) Did the District commit procedural violations of the IDEA when it made a unilateral decision, without conducting an Individualized Education Program (IEP) team meeting or parent, as to Student's placement at the commencement of school year 2013-2014?

(B) Did the District fail to meet its child find obligations in October 2011 when Student was failing to progress in the general education setting?

(C) Did the District deprive Student of a FAPE when it failed to refer Student for special education assessment following Student's parent's request in October 2011?

(D) Since October 2011, did the District commit a procedural violation of the IDEA when it prevented Student's parent from participating meaningfully in the IEP decision making process?

Student's proposed resolution is to be awarded compensatory education.

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 represent that they have served their evidence binders on each other in compliance with Education Code section 56505, subdivision (e)(7). 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. *The parties are encouraged to meet and confer so that each side's exhibit books do not contain duplicate exhibits.*

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. 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 disclosed in the party's prehearing conference statement except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

The parties are ordered to meet and confer by October 24, 2013, as to the schedule of witnesses for the first day of hearing. The parties have agreed to coordinate the availability and order of testimony of witnesses to ensure that there is a witness available to testify at all times during the hearing, and to ensure that the hearing is completed as scheduled.

The following witnesses may be called to testify by Student: Student's parent; Wendy Camera; John Mendiburu; Alyssa McPherson; Debbie Pasquini; Merril Clanton; Lori Hardy; Carrie Riel; Tanya McNamara; Joan Tubbs; Tom Ewing; Jocelyn Hively; and Crysta Hill.

The following witnesses may be called to testify by the District: Lori Hardy; Carrie Riel; Tanya McNamara; Alyssa McPherson; and Merril Clanton.

Neither side has designated expert witnesses.

The witness schedule will be finalized at the October 25, 2013 PHC. Also at the October 25, 2013 PHC, the ALJ and the parties will discuss the length of time anticipated for cross-examination of each witness and scheduling issues for individual witnesses and the ALJ will finalize the witness schedule. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

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.

5. Scope of Witness Examination. 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, 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.

7. Motions. As stated above, Student filed a motion to amend her complaint to add a new claim, failure to produce requested records. These records are those contained in Student's September 25, 2013 SDT. [2] The ALJ denied the motion as being untimely.

Student stated she will file a motion requesting leave to audio record the hearing, which will be heard at the next PHC. The District will also move to audio record the hearing in the event Student's motion is granted.

8. SDT and Records Production. On September 25, 2013, OAH, at the request of Student, caused to be issued a SDT addressed to Dr. John Mendiburu, Superintendent of the District, requesting the production of certain designated documents. On October 4, 2013, Student filed a motion to compel production of the documents pursuant to the SDT. The District filed an opposition to the motion on October 4, 2013, and a motion to quash the SDT on October 7, 2013.

The parties discussed their positions as to the two motions at the PHC. The parties have agreed that the District is required to produce to Student, no later than 4:00 p.m. on October 11, 2013, the following documents if the documents are in District's possession:

(a) Any documents, not previously produced, possessed by the Student Study Team relating to Student;

(b) Any documents, not previously produced, relating to Student and her Response to Intervention;

(c) Any emails relating to Student including those between Parent and Ms. Hardy;

(d) Any document relating to policies, procedures and protocols relating to Response to Intervention;

(e) Any documents related to District policies as to enrolling of students;

(f) Any audio recordings of Student's IEP meetings from February 14, 2013 to April 23, 2013;

(g) District states that it cannot provide transcripts of any of Student's IEP meetings as they do not exist; and

(h) Student's request for Medi-Cal billing for speech and language services provided to Student is not relevant to the issues in the complaint.

[2] Student failed to attach a proposed amended complaint to the motion.

The parties also agree that Student agrees to withdraw her SDT and motion to compel and the District agrees to withdraw its motion to quash the SDT.

9. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

10. Conduct of the Parties 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.

11. 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. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

12. Special Needs and Accommodations. None requested.

13. Hearing Open to the Public: Student requests the hearing to be open to the public. The District is directed to ensure that the hearing room has the capacity to accommodate 15 spectators.

14. 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.

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

IT IS SO ORDERED.

Dated: October 8, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings