BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

PASO ROBLES JOINT UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019120387

ORDER GRANTING REQUEST TO WITHDRAW ISSUE 2.E. AND DENYING REQUEST TO MODIFY ISSUE 2.A.

MARCH 6, 2020

On March 2, 2020, the undersigned held a prehearing conference, or PHC, in this matter, and OAH issued an Order Following PHC on March 4, 2020. That Order set forth the issues to be addressed at the due process hearing beginning on March 10, 2020.

On March 6, 2020, Student filed a request to withdraw issue 2.e in the Order Following PHC and to change the statement of issue 2.a.

On March 6, 2020, Paso Robles Joint Unified School District filed a pleading stating it had no opposition to the withdrawal of issue 2.e but did oppose the alteration of issue 2.a.

ISSUE 2.E.

The Order Following PHC set forth as issue 2.e. the claim that Paso Robles denied Student a free appropriate public education, called a FAPE, by failing to offer certain annual goals during the 2019-2020 school year, until December 30, 2020. Student's request to withdraw issue 2.e. is unopposed and is granted.

ISSUE 2.A

The parties primarily dispute the validity of an individualized education program offer of September 19 and November 15, 2019. Issue 2.a. in the Order Following PHC is whether Paso Robles denied Student a FAPE during the 2019-2020 school year, until December 30, 2020, by "failing to offer an appropriate residential placement." Student's PHC statement had requested that the issue read: "failing to offer an appropriate placement." At the PHC, the ALJ inserted the word "residential" to make the issue factual, as the term "appropriate," by itself, is unduly vague and amounts to a legal conclusion. It is part of the definition of a FAPE. (20 U.S.C. § 1401(9)(C).)

The insertion of "residential" was also intended to reflect the principal and oft-repeated claim in Student's first amended complaint that Paso Robles should have offered Student a residential placement, and nothing but a residential placement would have provided her a FAPE. As a resolution Student seeks a residential placement.

Student requests that the word "residential" be removed and asserts that while Student believes Paso Robles should have offered a residential placement, "the relevant question for hearing" is whether its offer was appropriate "to meet Student's unique needs." It is unduly narrow, Student contends, to limit the issue to "whether or not the District should have offered a residential placement – only." Student asserts that the ALJ has "narrow[ed] the issue to only residential placement."

That is an incorrect reading of the statement of issues in the Order Following PHC because it focuses exclusively on issue 2.a. The statement of issues also sets forth other assertions about the offer in other subsections. Subsection 2.b. allows Student to prove that Paso Robles failed to offer adequate mental health supports including social work services. Subsection 2.c. allows Student to prove that Paso Robles failed to offer adequate behavior supports. And issue 2.e, before Student withdrew it, allowed her to prove that Paso Robles failed to offer annual goals in all areas of need.

Student does not identify any well-pleaded claim in the first amended complaint that cannot be proved under the Order Following PHC as issued. Instead, she argues that she was "forced" to come home when her previous residential placement asked her to leave. Student does not explain why that should support a change in the formulation of issue 2.a.

Student also argues that "Student is spending substantial resources to have an expert observe the District's offered placement which is potentially not even an issue here." In its opposition Paso Robles represents that on the second day of hearing Student's expert will visit "a program in which Student is not currently in attendance, and which did not have the supports in place when Student attended." Whether that placement is the one proposed in the September-November 2019 offer is not clear, so any ruling about the relevance of the expert's upcoming visit will have to await the hearing.

In any event, the Order Following PHC states that Student's claims end on December 30, 2019, the day she filed her first amended complaint. Student does not explain why a visit by an expert that has not yet occurred to a placement that is not clearly defined would be relevant to her case, let alone to a request to change the statement of issues.

ORDER

1. Student's issue 2.e. is withdrawn.
2. Student's motion to alter issue 2.a. is denied.

DocuSigned by:
Charles Marson
22945BBAD50448E...

Charles Marson

Administrative Law Judge

Office of Administrative Hearings