BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. RIVER SPRINGS CHARTER SCHOOL,	OAH Case No. 2015110494
RIVER SPRINGS CHARTER SCHOOL, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2015120807 ORDER FOLLOWING PREHEARING CONFERENCE, GRANTING CONTINUANCE, AND SETTING DUE PROCESS HEARING DATES

On April 29, 2016, a telephonic prehearing conference was held before Administrative Law Judge Kara Hatfield, Office of Administrative Hearings. Phillip VanAllsburg, Attorney at Law, appeared on behalf of Student. Deborah Cesario, Attorney at Law, appeared on behalf of River Springs Charter School. The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

1. Hearing Dates, Times, and Location. The hearing is continued on motion of Student, to allow the parties to participate in a resolution session on May 9, 2016, at 1:30 p.m. The hearing shall take place on May 10, 11, 12, 16, 17, 18, and 19, and continuing day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall begin each day at 9:00 a.m. and end at 4:30 p.m., with the exception of the first day of hearing, which shall begin at 9:30 a.m., unless otherwise ordered. The hearing shall take place at Charter's office at 43466 Business Park Drive, Temecula, CA 92590.

As ordered in the scheduling order, Charter shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities. Charter certified that the facilities used for this case comply with the law. Charter shall inform OAH within two days of the date of this order if it is unable to comply with this order.

Prior to the beginning of the hearing, Charter shall ensure that the hearing room is configured into a courtroom setting and shall have at a minimum (1) a table for Student and his representatives; (2) a table for Charter's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. Charter shall provide drinking water and tissue to all parties, witnesses and the ALJ. The same hearing room shall be used for each day of hearing and shall be available at least one hour prior to the commencement of the hearing each day. The hearing room shall be locked following the hearing each night. Charter shall ensure that the hearing room and access to it are in compliance with the Americans with Disabilities Act.

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 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, and the proposed resolutions, are listed below.

Student's Issues

Did Charter deny Student a free appropriate public education by:

a) in the October 14, 2014 individualized education program failing to offer Student appropriate placement, specifically a nonpublic school;

b) in the October 14, 2014 IEP failing to offer Student appropriate related services, specifically[1] specialized academic instruction, services targeting dyslexia, behavior supports and services, and social skills training;

c) in the May 27, 2015 IEP failing to offer Student appropriate placement, specifically a nonpublic school;

d) in the May 27, 2015 IEP failing to offer Student appropriate related services, specifically specialized academic instruction, services targeting dyslexia, behavior supports and services, and social skills training;

e) in the November 19, 2015 IEP failing to offer Student appropriate placement, specifically a nonpublic school;

[1] At the prehearing conference, Student specified the related services she contends Charter inappropriately failed to offer or did not offer at a sufficient level. These categories were specified as applying to all three IEP's in dispute.

f) in the November 19, 2015 IEP failing to offer Student appropriate related services, specifically specialized academic instruction, services targeting dyslexia, behavior supports and services, and social skills training; and

g) failing to respond to Parent's February 12, 2015 request for an independent educational evaluation in the area of psychoeducation without unnecessary delay?

Student's proposed remedies are an independent educational evaluation in the area psychoeducation by Dr. Conway, reimbursement to Parents for tuition and transportation to Prentice nonpublic school from May 5, 2015 to the present, prospective placement at Prentice, and undefined compensatory education.

Charter's Issues

1) Did Student's November 14, 2015 IEP offer Student a FAPE, such that the IEP may be implemented without parental consent if Student returns to Charter or a public school?

2) Was Charter's October 15, 2014 psychoeducational assessment appropriate under the Individuals with Disabilities Education Act, such that Student is not entitled to an independent educational evaluation at public expense?

3) Are Charter's criteria for independent educational evaluations appropriate?

4) May Charter assess Student in the areas of assistive technology and social/emotional functioning pursuant to the August 2015 assessment plan without parental consent?

Charter's proposed remedies are an order that the November 14, 2015 IEP offered Student a FAPE, Student is not entitled to an independent evaluation in the area of psychoeducation, and Charter may assess Student in the areas of assistive technology and social/emotional functioning.

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 Charter exhibit (for example, "S-5, S-6," or "C-1, C-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 shall serve 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.

The parties are ordered to meet and confer by May 5, 2016, to delete duplicate exhibits from the exhibit binders.

The parties shall exchange resumes or curriculum vitae for each witness who is expected to testify as to their professional credentials. Notwithstanding the requirements of Education Code section 56505, subd. (e)(7), the parties shall exchange resumes not later than 24 hours before the witness is scheduled to testify.

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 May 5, 2016, as to the schedule of witnesses. The parties shall provide the ALJ with a detailed schedule which shall include an estimate of time for each side's direct and cross examination. Each witness will only be called once to testify, except for rebuttal purposes, and both parties shall examine the witness when the witness is first called. Charter shall have witnesses available in case agreement on a witness list is not reached. The parties shall be prepared at the end of each day of hearing to discuss the witnesses to be presented the next day and the time the testimony each witness is expected to take.

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. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

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. Unless otherwise ordered, the witness shall testify from a private room using a landline telephone. No witness will be heard by telephone unless all these requirements have been fulfilled. Neither party has requested telephonic testimony.

7. Electronic Recording of Hearing.

a. Audio Recording. Student's and Charter's requests to audio record the hearing are granted. Only the parties' attorneys may audio record the hearing, and the recording will be turned on and off at the same time as the ALJ's recording, avoid recording conversations while off the record. Only the ALJ's recording shall be deemed the official transcript of the hearing, unless otherwise ordered. The audio recording may only be used by the attorneys, may not be shared with others, may not be played to any witness, and may not be published or disseminated in any form or by any means. Operation of any recording mechanism will not be allowed to delay the hearing.

b. Video Recording. No party, witness or anyone else present may make any video recording of any part of the proceedings. Any person doing so shall be subject to sanctions.

8. Order of Presentation of Evidence. In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) Here, Student is the petitioning party on the issues stated in her case, and Charter is the petitioning party on the issues stated in its case. In this consolidated case, Student's case has been designated as the primary matter. Accordingly, Student shall present her case-in-chief, followed by District.

9. Motions. Student's motion to continue the hearing to allow the parties to participate in a resolution session was granted, as noted in Paragraph 1.

Charter's motion to change the location of the hearing was granted, without opposition from Student. The new location of the due process hearing is noted above in Paragraph 1.

No further prehearing motions are pending or contemplated. Any prehearing motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not made prior to or during the prehearing conference of April 29, 2016.

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

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 noisemaking electronic devices shall be shut off or set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ.

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

13. Special Needs and Accommodations. Neither party anticipates the need for accommodations or for interpreting services.

A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar staff, identified in the scheduling order, at (916) 263-0880, as soon as the need is known. Additional information concerning requests for reasonable accommodation is available on OAH's website at: http://www.dgs.ca.gov/oah/Home/Accommodations.aspx

14. Hearing Closed To the Public. The hearing is closed to the public, unless Student requests that it be open.

15. 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 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.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement as noted above, the parties shall submit a request for a status conference and provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

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

IT IS SO ORDERED.

DATE: May 2, 2016

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Kara Hatfield
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KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings