BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: ROCKLIN UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2014070464 ORDER FOLLOWING PREHEARING CONFERENCE

On October 3, 2014, a telephonic prehearing conference was held before Administrative Law Judge Theresa Ravandi, Office of Administrative Hearings. Colleen R. Villarreal, Attorney at Law, appeared on behalf of the Rocklin Unified School District (Rocklin). Allison S. Hyatt, Attorney at Law, appeared on behalf of Parent and Student. The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place at 2615 Sierra Meadows Drive, Rocklin, California 95677, on October 13, 2014, at 1:30 p.m. and October 15, 2014, at 9:30 a.m., and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ.[1]

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. Issue and Proposed Resolution. 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 issue at the due process hearing is as follows:

[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. Rocklin shall ensure that all parties, witnesses, and the ALJ have drinking water and tissue available to them, and that the hearing room and other facilities that will be used during the hearing are accessible in compliance with the Americans with Disabilities Act.

1) Did Rocklin's May 2014 speech and language assessment of Student meet all legal requirements such that Student is not entitled to a speech and language independent education evaluation at Rocklin's expense?

Proposed Resolution: Rocklin seeks an order that its May 2014 speech and language assessment met all legal requirements such that it is not required to fund Student's request for an independent evaluation in this area.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties are in the process of preparing a joint exhibit binder. If the parties do not use a joint exhibit binder, they 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 must comply with the exchange of evidence pursuant to 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.

At the PHC, Rocklin identified several additional documents it plans to exchange and use at hearing including: testing protocols, scores and reference sheets, text messages from its assessor, and a developmental chart for student's with Downs Syndrome. Student will, at Rocklin's request, provide the resumes for her expert witnesses. The parties are encouraged to provide resumes for all professional witnesses.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not timely 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. The parties shall informally meet and confer to coordinate their witness production and schedules. At the commencement of the hearing, the parties will present their witness schedules, and the ALJ and the parties will discuss the witness schedules, including the length of time anticipated for examination of each witness and any scheduling issues for individual witnesses. 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 is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available. Neither party shall be permitted to call any witnesses not timely disclosed except for good cause shown, and at the discretion of the ALJ.

Rocklin intends to call the following witnesses: Yvonne Katsuyama, Janna Cambra, Mother, and Kelly Booth. Student intends to call Pam Brunner, Jody Ciesco, Yvonne Katsuyama, and experts Jane Johnson and Dr. Lisa Lindsey.

Rocklin's objection to Student calling witness Jody Ciesco was noted for the record. Student is not prohibited from calling this witness so long as her testimony pertains to the sole issue at hand. Rocklin may renew its objection at the time of hearing.

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. Order of Presentation of Evidence and Scope of Witness Examination. Rocklin bears the burden of proof and shall present its evidence first, followed by Student. Where Student and Rocklin 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.

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. 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.

Given the change in the hearing schedule, Student will check the availability of its expert to testify on October 15, 2014, and may file a motion requesting that Jane Johnson be permitted to testify telephonically.

7. Motions.

Audio Recording of the Hearing: Student and Rocklin requested permission to audio record the hearing. It is within the discretion of the ALJ to permit the audio recording of a due process hearing. Both parties will be permitted to audio record the hearing on the following conditions: 1) that OAH's recording is the only official recording; 2) that the recording will be turned on and off at the same time as the ALJ's recording, in order to avoid recording conversations while off the record; and 3) that operation of the party's recording mechanism will not be allowed to delay the hearing.

Aside from Student's possible motion for telephonic testimony, no other prehearing motions are pending or contemplated. Any other 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 on October 3, 2014.

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

9. 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.

10. Special Needs and Accommodations. Rocklin shall ensure that the hearing room and other facilities that will be used during the hearing are accessible in compliance with the Americans with Disabilities Act. At present neither party anticipates the need for special accommodation for any witness or party, or for interpreter services.

11. Hearing Open To the Public. At the request of Student, the hearing will be open to the public. Student indicated that less than 10 members of the public would be in attendance. Student is to confirm with Rocklin the likely number of attendees so that Rocklin can ensure that the hearing room is able to accommodate members of the public. If an alternate site is needed, Rocklin is to immediately request a change in venue.

12. 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 OAH receives a letter of withdrawal or request to dismiss the case, or the signature page of a signed agreement withdrawing the matter. 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.

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

IT IS SO ORDERED.

DATE: October 6, 2014

/s/
THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings