BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. RINCON VALLEY UNION SCHOOL DISTRICT AND REDWOOD CONSORTIUM FOR STUDENT SERVICES.	OAH Case No. 2015030342 ORDER FOLLOWING PREHEARING CONFERENCE

On April 20, 2015, a telephonic prehearing conference was held before Administrative Law Judge B. Andrea Miles, Office of Administrative Hearings.[1] Myra Galt, an advocate, appeared on behalf of Student. Monica Batanero, attorney at law, appeared on behalf of Rincon Valley Union School District and Redwood Consortium for Student Services. The PHC was recorded.

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

1. Motion to Dismiss Redwood Consortium as a Party

On April 3, 2015, Redwood Consortium filed a motion to dismiss it as a party. During the PHC, the parties' oral arguments regarding the motion were heard. Redwood Consortium requested to submit additional evidence in support of its motion. The parties were given until close of business, Thursday, April 23, 2015, to submit any additional evidence or briefing on the issue of whether Redwood Consortium should be dismissed as a party. A ruling on the motion to dismiss will be issued prior to start date of the due process hearing.

2. Hearing Dates, Times, and Location: The hearing shall take place April 28 - 30, 2015, and continuing day to day, Monday through Thursday at the discretion of the ALJ. The hearing shall be held at Rincon Valley district office, located at 1000 Yulupa Avenue,

[1] The PCH began at approximately 10:30 AM, but was continued until 3:00 PM to allow Student time to submit his PHC statement.

Santa Rosa, California 95405.[2] The hearing shall begin at 9:30 a.m. on the first day of the hearing, and at 9:00 a.m. on all other days unless otherwise ordered by the ALJ.

Rincon Valley shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.

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.

3. Issue and Proposed Resolution: The issue for the due process hearing and the proposed resolution were discussed and clarified during the PHC and are set forth below.

Issue: Did Rincon Valley and/or Redwood Consortium deny Student a free appropriate public education by failing to offer Student placement in a special day class and appropriate related services at the individualized education program team meetings which occurred during the 2014-2015 school year?[3]

Proposed Resolution: Student seeks an order requiring Rincon Valley and Redwood Consortium to place Student at the Kiwi Preschool with Reflective Network Therapy until Student is ready to enter Kindergarten.

4. 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. The parties shall include only one document per each exhibit tab. Each exhibit binder shall contain a detailed table of contents. The parties shall serve their evidence binders on each other in compliance with Education

[2] 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. Rincon shall ensure that all parties, witnesses, and the ALJ have drinking water available to them.

[3] The issue has been reframed for the purpose of clarification. During the PHC, Student was unable to provide the dates of all of the IEP team meetings which Student was placing at issue. Student was put on notice that he must be prepared at the outset of the hearing to notify the ALJ of all of the dates of the IEP team meetings which he has put at issue. Any further discussion regarding the framing of the issue will be held at the beginning of the hearing.

Code section 56505, subdivision (e)(7), at least five business days prior to hearing. 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.

5. 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 timely disclosed except for good cause shown, or in rebuttal, unless the ALJ rules otherwise.

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 parties shall meet and confer as to the schedule of witnesses and projected length of direct and cross-examination. At the start of the hearing, the parties shall present a final schedule of witnesses with time estimates.

6. Order of Presentation of Evidence and Scope of Witness Examination: Student bears the burden of proof and shall present its evidence first, followed by Rincon Valley and Redwood City. Where Student and Rincon Valley/Redwood Consortium 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.

7. 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 the parties' 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.

During the PHC, Student was uncertain as to whether his expert witness needs to appear by telephone. Student was directed to immediately notify OAH in the event that he determines that his witness needs to appear by telephone, so that the ALJ may rule on that on that issue and proper accommodation can be made.

8. Electronic Recording of Hearing: Neither party informed the ALJ that they desired to record the hearing. The parties may make that request at the beginning of the hearing. If the parties elect to record the hearing, the following conditions apply to any

recording: 1) that OAH's recording is the only official recording; 2) that the recorder will be turned on and off at the same time as the ALJ's recording, to avoid recording conversations while off the record; and 3) the operation of the party's recording mechanism will not be allowed to delay the hearing. Failure to comply with these conditions may result in a revocation of this order which grants the parties permission to make an audio recording of the hearing.

9. Motions: No pretrial motions, other than the motion to dismiss, are pending or contemplated. 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 the prehearing conference.

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 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. Special Needs and Accommodations: A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk at (916) 263-0880, or the OAH ADA Coordinator at OAHADA@dgs.ca.gov or 916-263-0880, as soon as the need is made known. Additional information concerning a request for reasonable accommodation is available on OAH's website at http://www.dgs.ca.gov/oah/Home/Accommodations.aspx.

At present neither party anticipates the need for special accommodation for any witness or party, or for interpreter services.

13. Hearing Closed To the Public: The hearing will be closed to the public.

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.

DATE: April 22, 2015

/s/
B. ANDREA MILES
Administrative Law Judge
Office of Administrative Hearings