BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Consolidated Matters of:<br><br>SAN RAMON VALLEY UNIFIED SCHOOL DISTRICT,<br><br>v.<br><br>PARENTS ON BEHALF OF STUDENT, | OAH Case No. 2019021013 |
| PARENTS ON BEHALF OF STUDENT,<br><br>v.<br><br>SAN RAMON VALLEY UNIFIED SCHOOL DISTRICT. | OAH Case No. 2019011204<br><br>ORDER FOLLOWING PREHEARING CONFERENCE AND DENYING MOTION TO AMEND WITHOUT PREJUDICE |

On March 18, 2019, a telephonic prehearing conference was held before Administrative Law Judge Theresa Ravandi, Office of Administrative Hearings. Deborah Ettinger, Attorney at Law, appeared on behalf of San Ramon Valley Unified School District. Natashe Washington, Attorney at Law, appeared on behalf of Parents and Student. The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on March 26 through 28, 2019, and continue day to day at the discretion of the ALJ.[1] The hearing shall take place at San Ramon's District Office located at 699 Old Orchard Drive, Danville, California, 94562. The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 a.m. all other days, unless otherwise ordered.

[1] The parties anticipate this matter requiring four days for hearing, and it was their request that this matter proceed on Friday, March 29, 2019, if an additional hearing day is warranted. The undersigned informed the parties that she is not available for hearing on Friday, March 29, 2019, if an additional hearing day is required.

As ordered in the scheduling order, San Ramon 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. During the PHC, San Ramon certified that the facilities used for this case comply with the law. San Ramon shall file a written certification with OAH within two days of the date of this order.

Prior to the beginning of the hearing, San Ramon 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 District's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. San Ramon 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. San Ramon 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.[2] The issues at the due process hearing, and the proposed resolutions, were discussed and clarified during the PHC and are listed below.

*San Ramon's Issue*

*Issue 1:* Does San Ramon's April 20 and May 11, 2018 individualized education program for Student constitute a free appropriate public education in the least restrictive environment?

*Proposed Resolution*: San Ramon requests an order finding the April and May 2018 IEP constitutes a FAPE in the least restrictive environment such that it may implement it without Parent consent.

[2] The ALJ has reworded some of the issues as allowed by the holdings in *J.W. v. Fresno Unified Sch. Dist*. (9th Cir. 2010) 626 F.3d 431, 442-443, and *Ford v. Long Beach Unified Sch. Dist*. (9th Cir. 2002) 291 F.3d 1086, 1090. (But see *M.C. v. Antelope Valley Union High Sch. Dist*. (9th Cir. 2017) 858 F.3d 1189, 1196, fn. 2 [dictum].) If either party disagrees that the issues as framed in this Order accurately capture the issues from the complaints and as discussed during the PHC, that party shall immediately inform OAH in writing.

*Student's Issues*

*Issue 2*: Beginning February 1, 2017, Did San Ramon's May 25, 2016 IEP deny Student a FAPE for the 2016-2017 school year beginning February 1, 2017, by failing to offer placement in the least restrictive environment?

*Issue 3*: Did San Ramon's April 28 and May 3, 2017 IEP's deny Student a FAPE for the 2017-2018 school year by failing to offer placement in the least restrictive environment?

*Issue 4*: Did San Ramon's April 20, 2018 IEP, continued to May 11, 2018, deny Student a FAPE for the 2018-2019 school year by failing to offer placement in the least restrictive environment?

*Issue 5*: Did San Ramon deny Student a FAPE by failing to have all required IEP team members, specifically a general education teacher, present at the April 28 and May 3, 2017 IEP team meetings?

*Issue 6*: Did San Ramon deny Student a FAPE for the 2017-2018 and 2018-2019 school years by predetermining Student's placement?

*Issue 7*: Did San Ramon deny Student a FAPE by failing to provide prior written notice of its refusal to fund an independent educational evaluation pursuant to Parents' May 29, 2018 request?

*Issue 8:* Did San Ramon deny Student a FAPE for the 2018-2019 school year by failing to file a due process hearing request to seek a determination that the April 20 and May 11, 2018 IEP's offered Student a FAPE and authorization to implement the IEP's without Parents' consent?

*Proposed Resolutions*: Student seeks: (1) an appropriate placement and related services; (2) an order that San Ramon fund an independent psychoeducational evaluation; (3) reimbursement for the costs of private placement services; and (4) compensatory education in all areas of need.

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 shall ensure that there is only one document or a short series of related documents for each exhibit tab. Any audio recordings shall be submitted on a flash drive. 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. In the event of duplicate exhibits, the most legible version will be used.

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 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 timely disclosed except for good cause shown and at the discretion of the ALJ.

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 no later than March 20, 2018, to develop a joint proposed written witness scheduled with time estimates for the hearing. San Ramon's objection that two of Student's witnesses from her current private school placement would not be able to provide relevant testimony was noted for the record and overruled. San Ramon may renew any objection to a proffered witness at the time of hearing.

The parties shall attempt to reach agreement on a witness list for the first day of hearing. San Ramon shall have witnesses available in case agreement on a witness list is not reached. Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for direct and cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. Additionally, 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 of each such witness is expected to take.

5. Scope of Witness Examination. Each witness shall be called to testify only once, except for rebuttal purposes, and all parties shall examine the witness on all issues when the witness is first called. After the first direct and cross-examinations, each party shall be generally limited in examining the witness to only those matters raised in the immediately preceding examination. The order in which the parties present their cases in chief shall be subordinate to the need for each witness to appear only once.

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. Neither party identified a need for telephonic testimony.

7. Electronic Recording of Hearing.

a. Audio Recording. Each party's motion to make an audio recording of the hearing is granted, subject to the following conditions: 1) that OAH's recording is the only official recording; 2) that the recorders will be turned on and off at the same time as the ALJ's recorder, 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.

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, each party bears the burden of proof as that party's issues(s). The parties agree that Student shall, in general, present her case-in-chief first, followed by San Ramon.

9. Motions.

*San Ramon's Motion to Amend*

At the start of the PHC, San Ramon verbally moved to amend its complaint to include an additional assessment issue. San Ramon seeks to add as an issue for hearing whether it is entitled to conduct Student's triennial assessments pursuant to its February 11, 2019 assessment plan without Parents' consent. San Ramon's counsel represented that she did not file a written motion to amend three business days prior to the PHC as she just recently confirmed with Student's counsel that Parents will not consent to the assessment plan at this time. Student did not oppose the motion. Both parties request that this matter proceed to hearing on the current schedule.

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

San Ramon's motion to amend is denied without prejudice. San Ramon has not filed a written motion to amend with a proposed amended complaint and supporting facts.

Further, upon granting a motion to amend, the applicable timelines for the due process hearing restart.

San Ramon anticipates the possibility of filing a written motion to amend. No other pretrial motions are pending or contemplated. **Any 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 three business days prior to the prehearing conference of March 18, 2019.**

10. Compensatory Education and 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.

11. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form at the time of hearing.

12. 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.

13. 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 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 https://www.dgs.ca.gov/oah/Home/Accessibility.aspx.

14. Hearing Open To the Public. At the request of Student, the hearing will be open to the public.

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 EMAIL THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT https://www.applications.dgsapps.dgs.ca.gov/oah/oahsftweb .

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.

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

IT IS SO ORDERED.

DATE: March 18, 2019

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Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings