BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. SACRAMENTO CITY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2014120055
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2014080831 ORDER AFTER PREHEARING CONFERENCE

On April 6, 2015, a telephonic prehearing conference in the consolidated matters was held before Administrative Law Judge Adeniyi A. Ayoade, Office of Administrative Hearings. Attorney F. Richard Ruderman appeared on behalf of Student and Parents. Attorney Sarah L. Garcia appeared on behalf of the Sacramento City Unified School District. The conference was recorded.

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

1. Hearing Dates, Times, and Location. The hearing in these matters shall take place at Sacramento City's offices located at **5735 47th Ave., Sacramento, CA 95824**. The hearing shall take place on April 13-16, 2015, and April 21-23, 2015, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. The hearing shall begin each day at 9:00 a.m. and end at 5:00 p.m., except for April 13, 2015 when the hearing shall begin at 1:30 p.m., unless otherwise ordered.

The hearing room provided by Sacramento City shall have separate tables capable of being moved into a courtroom configuration, as follows: (1) one table for Student's representatives; (2) one table for the Sacramento City's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table. Sacramento City 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 which will be used during the hearing are accessible. **In addition, Sacramento City 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.

2. Issues and Proposed Resolutions. The issues at the due process hearing are those that were alleged in Student's and Sacramento City's respective requests for due process hearing (complaints).[1] As necessary, the issues have been reframed for clarity, as set forth herein below:

STUDENT'S ISSUES

1) During the 2012-2013 school year, did Sacramento City procedurally deny Student a free appropriate public education by failing to make a clear written offer and failing to provide adequate present levels of performance data about Student?

2) During the 2013-2014 school year, did Sacramento City procedurally deny Student a FAPE by failing to make a clear written offer in the March 20 and May 29, 2014 individualized education programs?

3) During the 2013-2014 school year, did Sacramento City deny Student a FAPE by failing to conduct assessments that met all legal requirements because:

    a. The psycho-educational assessment failed to adequately assess Student's academic achievement, executive functioning and social/emotional functioning;

    b. The functional behavior assessment failed to adequately assess Student;

[1] Any issue(s) that is not identified in the complaints, and/or permitted by this order, shall be included only upon OAH granting a motion to amend the complaint. All amendments to the complaints shall comply with the requirements of California Education Code section 56502, subdivision (e), and such amendment will restart all applicable timelines for the due process hearing in this matter. (20 U.S.C. § 1415(c)(2)(E)(ii).) The issues have been reframed for clarity, and to align the issues statements with statutory language.

c. The Speech and language assessment failed to adequately assess Student's social skills; and

d. The educationally related mental health assessment failed to adequately assess Student?

4) During the 2013-2014 school year, did Sacramento City deny Student a FAPE by failing to conduct an occupational therapy assessment of Student?

5) From November 21, 2012 through the 2014-2015 school years and the extended school years, while the Student was enrolled at Sacramento City, did Sacramento City deny Student a FAPE by:

a. failing to offer or provide Student with measurable goals in all areas of needs, including social-emotional functioning, behavior, executive functioning, reading comprehension and written expression;

b. failing to offer or provide Student with adequate mental health services;

c. failing to offer or provide Student with adequate behavior supports and services;

d. failing to offer or provide Student with adequate speech services including a structured social skills program;

e. failing to implement the accommodations and modifications contained in Student's IEP's;

f. failing to adequately address Student's executive functioning deficits; and

g. failing to offer or provide Student with an appropriate placement in the least restrictive environment?

SACRAMENTO CITY'S ISSUES

1) Did Sacramento City's January 2013 and May 2014 psycho-educational assessments of Student meet all legal requirements such that Student is not entitled to an independent psycho-educational evaluation at public expense?

2) Did Sacramento City's January 2013 speech and language assessment of Student meet all legal requirements such that Student is not entitled to an independent educational evaluation, at public expense, in the area of speech and language?

3) Did Sacramento City's May 2014 behavior assessment of Student meet all legal requirements such that Student is not entitled to an independent educational evaluation, at public expense, in the area of functional behavior?

4) Is Student entitled to an independent educational evaluation, at public expense, for occupational therapy?

PROPOSED RESOLUTION: As proposed resolutions, Student seeks an order finding her the prevailing party, and directing Sacramento City to: 1) fund independent educational evaluations in the areas of psycho-educational functioning, speech and language, occupational therapy, behavior and mental health; 2) convene an IEP team meeting and fund the presence of the independent assessors at the meeting; 3) provide compensatory education/services in the areas of behavior, occupational therapy, social skills, mental health, executive functioning, and academic; 4) reimburse parents for all costs of her placement at Springstone; 5) reimburse parents for the cost if tutoring Student;[2] 6) continue to place/fund Student's placement at Springstone; and 7) provide other relief as ordered by OAH. On its part, Sacramento City requests that OAH finds its assessments met all legal requirements, and that Student is not eligible for independent evaluations in the areas that were assessed by Sacramento City. Also, Sacramento City seeks an order finding Student ineligible for an independent educational evaluation for occupational therapy, as Sacramento City has not had the opportunity to conduct an occupational therapy assessment of Student.

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 in a way that makes clear the party offering it (such as "S1" or "D2"). Each exhibit shall be internally paginated, by exhibit, or all pages of a party's exhibit binder shall be Bates-stamped or otherwise consecutively numbered. Each exhibit binder shall contain a detailed table of contents. Each party shall serve an exhibit binder containing its respective exhibits on the other party in compliance with Education Code section 56505, subdivision (e)(7). Except for good cause shown, or unless used solely for rebuttal or impeachment, a party may be not be able to present an exhibit that has not been disclosed, or exchanged with the opposing party, as required by law.

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.

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 to the other party. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses twice or out of order. A party

[2] During the prehearing conference, Student requested and, over Sacramento City's attorney's objection, was allowed to include tutoring reimbursement as a proposed remedy.

may not be allowed to call any witnesses not properly disclosed as required by law, 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 regarding the schedule of witnesses, and prepare a proposed joint or individual witness schedule(s). The proposed witness schedule(s) shall identify the witnesses each party intends to call, as opposed to witnesses the party may call depending on the flow of the hearing and the evidence. Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for their 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. The order in which the parties present their cases in chief shall be subordinate to the need for each witness to appear only once, so the parties shall be required to establish their cases in chief during the first appearance of a witness.

6. Telephonic Testimony. A party seeking to present a witness by telephone shall move in advance for leave to do so; 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. Neither party requested telephonic testimony.

7. Electronic Recording of Hearing.

a. Audio Recording. The following conditions apply to any recording: 1) OAH's recording is the only official recording; 2) 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. Sacramento City's motion to be allowed to audio record the due process hearing proceedings is granted. Additionally, both parties shall be allowed to record the proceedings.

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. Timely Disclosure of Witnesses/Exhibits. The parties are to comply with Education Code section 56505, subdivision (e)(7), that provides for disclosure of witnesses and exhibits "at least" five business days prior to the hearing.

9. Order of Presentation of Evidence. In these consolidated matters, Student shall present her case first followed by Sacramento City. If a witness it to be called by both

parties, counsel shall be prepared to ask their questions of the witness – direct and cross so as to prevent the need for the witness to be recalled.

10. Motions. No pretrial motions are pending or contemplated other than that discussed below. 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 prior to or during the prehearing conference.

> Order Deferring Ruling on Motion to Observe Proposed Placement. On April 1, 2015, through his prehearing conference statement, Student requested that the ALJ observe the proposed placement as part of the hearing pursuant to Education Code section 56505.1, subdivision (c). The motion was discussed on the record, and Sacramento City requested additional time to file a written response to the motion. Sacramento City's request for time is granted, and accordingly, the ruling on the motion is deferred until the first day of the scheduled hearing. Sacramento City must file its response by the close of business on Friday, April 10, 2015.

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

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. 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.

14. 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 916-263-0880 or** OAHADA@dgs.ca.gov as soon as the need is made known. Additional information concerning requests for reasonable accommodation is available on OAH's website at http://www.dgs.ca.gov/oah/Home/Accommodations.aspx. At present neither party has requested any special accommodation for any witness or party, or for interpreter services.

15. Hearing Closed To the Public. At the request of the parent, the hearing will be closed to the public.

16. 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.

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

IT IS SO ORDERED.

DATE: April 07, 2015

/S/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings