

**SEND**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
3470 Twelfth Street, Riverside, CA - Eastern Division  
CIVIL MINUTES - GENERAL

Case No. EDCV 06-00390-SGL (OPx)

Date: December 21, 2006

Title: YUCAIPA-CALIMESA JOINT UNIFIED SCHOOL DISTRICT -v- L.A., a minor,  
identified through Office of Administrative Hearings Case No. N2005070042, through  
his parents

=====

PRESIDING: HONORABLE STEPHEN G. LARSON, UNITED STATES DISTRICT JUDGE

Jim Holmes  
Courtroom Deputy Clerk

None present  
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

None present

None present

PROCEEDINGS: ORDER REMANDING CASE TO DUE PROCESS HEARING OFFICER FOR  
FURTHER PROCEEDINGS (IN CHAMBERS)

The Court has received and reviewed plaintiffs' opening brief, filed October 17, 2006, defendant's response brief, filed November 14, 2006, plaintiff's reply brief, filed November 28, 2006, and the supplemental brief of both parties filed December 15, 2006. The Court has also fully considered the argument of counsel at the trial herein conducted on December 12, 2006.

Plaintiff advances three arguments for reversing the decision of the Due Process Hearing Officer: First, that the officer completely failed to address plaintiff's evidence (notably the testimony of Ms. Franklin, Ms. Chaves-Dybiczyk, and Ms. Gayle Wray) submitted in support of its argument that the plaintiff was in fact providing a free appropriate public education to defendant; second, that defendant's parents failed to provide the required ten-days' notice prior to removing defendant from plaintiff's public school program; and third, that the officer erroneously awarded parents reimbursement costs for an assessment because plaintiff had, in fact, conducted an assessment prior to that conducted by defendant's parents.

As previously set forth on the record, the Court finds substantial evidence supports that defendant's parents did provide ten-days' notice before removing defendant from plaintiff's public school program. Specifically, the record reveals that such notice was provided at least as of the meeting between the parents and the IEP on March 4, 2005, and defendant was not removed from the school until March 18, 2005. Accordingly, that argument is rejected.

MINUTES FORM 90  
CIVIL -- GEN

Page 1

DOCKETED ON CM  
DEC 26 2006  
[Handwritten initials]

Initials of Deputy Clerk: jh

[Handwritten initials and circled number 24]

However, with respect to the remaining two arguments, the record is simply insufficient for this Court to conduct the review required of it under a standard requiring that "due weight" be afforded to the findings of hearing officer. Specifically, there is no indication in the hearing officer's decision that he ever considered plaintiff's evidence that defendant was provided an appropriate education and had made progress in the public school program. Although the hearing officer references the testimony of Drs. Wilson and Chehrazi who faulted plaintiff's program, he never explains whether or why he discounted the contrary testimony of Ms. Franklin, Ms. Chaves-Dybicz, and Ms. Gayle Wray who lauded the program and its results for defendant. One possibility, as defendant contends, is that the hearing officer may have found plaintiff's witnesses lacking in credibility based on their testimony during the due process hearing; another, as plaintiff contends, is that the hearing officer failed to even consider their testimony. Other possibilities exist as well. Without any reference to this testimony in the hearing officer's decision, however, the Court (and the parties) can only speculate. Moreover, there is no indication in the record that the hearing officer considered the plaintiff's Multi-disciplinary Assessment Report and Occupational Therapy Report in concluding that plaintiff did not conduct its own assessment of plaintiff, a factor that apparently led the hearing officer to award costs associated with the parent's assessment.

With such information missing from the hearing officer's decision, this Court is unable to conduct the review as required by law. Thus, as to the two issues identified above – consideration of plaintiff's witnesses concerning defendant's progress and the appropriateness of plaintiff's program as well as plaintiff's assessments – the Court will afford preliminary deference to the hearing officer and provide the hearing officer with an opportunity to explain his reasoning. Although plaintiff is correct that there is nothing in the relevant statutes and regulations expressly providing for remand, it also appears that there is nothing which prohibits remand. Moreover, case law suggests that, in circumstances such as these, remand is appropriate. See, e.g., Reid v. District of Columbia, 401 F.3d 516, 526 (D.C. Cir. 2005) (recognizing that district court may determine that appropriate relief is a remand to the hearing officer for further proceedings), JH ex rel. JD v. Henrico County School Board, 395 F.3d 185, 198 (4th Cir. 2005) (remanding IDEA suit to district court with instructions to remand to hearing officer); cf. Shapiro v. Paradise Valley Unified School District, 152 F.3d 1159, 1160 (9th Cir. 1998) (stay of action required where district court remands case to hearing officer for further determinations).

Because this Court finds that a remand to the hearing officer is appropriate to address the issues identified above, the present action is STAYED and the matter is REMANDED to the hearing officer for further proceedings consistent with this order. Counsel for plaintiff is ORDERED to provide the hearing officer with a copy of this order as well as copies of plaintiff's opening brief, defendant's response brief, and plaintiff's reply brief as referenced above. Any further findings by the hearing officer are to be lodged with this Court and shall be made a part of the administrative record in the action pending before this Court. Upon the filing of the hearing officer's decision on the matters remanded, the stay shall be lifted and the matter set for hearing in this Court upon written notice by counsel for plaintiff. The parties are ORDERED to provide this Court with a joint, written status report in 90 days.

IT IS SO ORDERED.