

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FALLBROOK UNION HIGH SCHOOL  
DISTRICT.

OAH CASE NO. 2007090067

ORDER CONTINUING THE  
PREHEARING CONFERENCE, AND  
ORDER FOR SUPPLEMENTAL  
BRIEFING

On November 20, 2007, Office of Administrative Hearings (OAH) Administrative Law Judge (ALJ) Susan Ruff issued a Decision following a due process hearing in this matter that was conducted in October 2007. In that Decision, ALJ Ruff ordered the parties to participate in an individualized education program (IEP) team meeting to develop an appropriate program that would permit Student to obtain a high school diploma. That IEP team meeting was held on February 7, 2008, but the parties were unable to reach agreement about an appropriate program. Subsequently, Student was enrolled in a nonpublic school.

ALJ Ruff's Decision was appealed in the United States District Court, Southern District of California. On January 27, 2011, United States District Court Judge Larry Alan Burns remanded this matter back to OAH and ordered that a determination be made as to whether the District's IEP offer of February 7, 2008, was appropriate, and if not, whether Student's private school placement was appropriate.

On October 12, 2011, ALJ Rebecca Freie convened a prehearing conference (PHC) concerning the due process hearing to adjudicate the remanded issues which is scheduled to begin on October 24, 2011. Tania Whiteleather, Attorney at Law, appeared on behalf of Student. Geoffrey Winterowd, Attorney at Law, appeared on behalf of Fallbrook Union High School District. During the course of the PHC, Ms. Whiteleather asked the ALJ to determine which party had the burden of proof for each of the issues. Ms. Whiteleather also questioned whether it was appropriate for an ALJ other than ALJ Susan Ruff to conduct the due process hearing on the remanded issues.<sup>1</sup>

Supplemental briefing is required to assist OAH in determining which party has the burden of proof as to both issues that were remanded back to OAH, and also to determine whether this matter must be heard by ALJ Ruff (who may not be available to hear this matter

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<sup>1</sup> ALJ Adrienne Krikorian is currently assigned to conduct the due process hearing scheduled to begin on October 24, 2011.

commencing on October 24, 2011), or can be heard by another OAH ALJ. Accordingly, the parties are ordered to file supplemental briefing with OAH concerning these matters no later than 5:00 p.m. on October 13, 2011, and the PHC is continued to 10:00 a.m. on October 17, 2011.

IT IS SO ORDERED.

Dated: October 13, 2011

/s/

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REBECCA FREIE  
Administrative Law Judge  
Office of Administrative Hearings