

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN RAFAEL CITY SCHOOLS.

OAH Case No. 2015021034

ORDER FOLLOWING NON-
EXPEDITED PREHEARING
CONFERENCE; DISMISSING
NOVATO UNIFIED SCHOOL
DISTRICT AS A PARTY; GRANTING
REQUEST TO CONTINUE AND
SETTING DUE PROCESS HEARING
DATES

On April 13, 2015, a telephonic prehearing conference was held before Administrative Law Judge Adeniyi A. Ayoade, Office of Administrative Hearings. Blanca C. Vaughan, Attorney at Law, represented Student. Jan E. Tomsky, Attorney at Law, represented the San Rafael City Schools (San Rafael). The prehearing conference was recorded. Based on discussion of the parties, the ALJ issues the following order:

1. Order Dismissing Novato Unified School District: Novato Unified School District was originally named as a party to this case. During the prehearing conference, the attorney for Student advised that all issues against Novato have been resolved pursuant to an April 12, 2015 settlement agreement between Student and Novato. Accordingly, Student requested that Novato be dismissed from the case as all issues against Novato have been withdrawn. Pursuant to Student's request, Novato was DISMISSED from this case.

2. Order Granting Request for Continuance and Setting Hearing Dates, Times, and Location. During the prehearing conference, San Rafael made an unopposed request to continue the hearing by one day, and to begin the hearing on April 21, rather than April 20, 2015. The request to continue the date was granted.¹ Accordingly, the hearing shall take place on April 21-23, 2015, and continue day to day, Monday through Thursday, as needed at the discretion of the ALJ. Unless otherwise ordered, the hearing shall begin each day at

¹ A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) The ALJ evaluated San Rafael's request to continue the hearing for one day, and considered all relevant facts and circumstances. Good cause was established for a one-day continuance. In addition, no prior continuance has been granted in this matter.

9:00 a.m. and end at 5:00 p.m., except for April 21, 2015 when the hearing will begin at 9:30 a.m. The hearing shall take place at San Rafael's offices located **at 310 Nova Albion Way, San Rafael, California, 94903.**

San Rafael 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. At a minimum, San Rafael shall provide a hearing room with separate tables capable of being moved into a courtroom configuration, as follows: (1) one table for Student's representatives; (2) one table for the San Rafael's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table. San Rafael 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.

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. Issues and Proposed Resolutions. The non-expedited issues at the due process hearing are based on Student's request for due process hearing (complaint) as reframed and clarified in this order.² The issues are as follows:

- 1) From June 2013 to the present time, did San Rafael deny Student a free appropriate public education by failing to assess Student in the areas of suspected disability involving Student's behavioral and mental health functioning?
- 2) From June 2013 to the present time, did San Rafael deny Student a FAPE by failing to provide him with an appropriate educational program designed to meet his needs in the areas of behavior and mental health?
- 3) Did San Rafael commit a procedural violation which denied Student a FAPE by amending Student's individualized educational program on November 4, 2014, and November 21, 2014 without an IEP team meeting, without notice to Parent, or consent of the Parent?

² During the prehearing conference, Student requested that Issue One in the February 23, 2015 complaint be dismissed, as the issue has been resolved as part of the expedited portion of this case. Student's request is granted, and Issue One in the complaint is DISMISSED.

- 4) From January 10, 2015 to the present time, did San Rafael commit a procedural violation which denied Student a FAPE by failing to provide Student's educational records requested by Student's attorney?

PROPOSED RESOLUTION: As proposed resolutions, Student seeks an order from OAH directing San Rafael to: 1) provide all of his Student's records to his Parents, and provide his Parent with a log of the types and location of school records collected, maintained or used by San Rafael; 2) fund independent neuro-psychological and mental health educational evaluations of Student, and fund the attendance of the independent assessors and a Parent advocate at the IEP team meeting convened to discuss the evaluations' results; 3) provide Student with psychotherapy, behavioral services, and school-based counselling services as determined appropriate by the independent assessors; and 4) pay Student's attorneys' fees and costs.

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 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.

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 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.

The parties are ordered to meet and prepare a joint or individual proposed witness schedule(s) to be delivered to the ALJ at the beginning of hearing. 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 parties shall discuss the length of time anticipated for each witness and any scheduling issues anticipated for each witness. 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 has requested a telephonic testimony for any witness.

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.

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 this matter, Student shall present his case first followed by San Rafael. If a witness is to be called by both parties, counsel shall be prepared to ask their questions of the witness, whether for direct or cross-examination - so as to prevent the need for the witness to be recalled.

10. Motions. There are no pending pretrial motions. 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.

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>. During the prehearing conference, Student requested a Spanish Language interpreter, which OAH will provide. Otherwise, neither party has requested any other special accommodation for any witness or party.

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 14, 2015

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings