BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. RIM OF THE WORLD UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013120111 ORDER FOLLOWING PRE-HEARING CONFERENCE OF JANUARY 27, 2014

On January 27, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Darrell Lepkowsky, Office of Administrative Hearings (OAH). Lincoln Ellis and Dan Stormer, Attorneys at Law, appeared on behalf of Student. Vivian Billups, Attorney at Law, appeared on behalf of the Rim of the World Unified School District (District). The ALJ recorded the prehearing conference.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on February 6, 10, and 11, 2014, and shall continue day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge**,** at the District's offices located at **27315 North Bay Road, Blue Jay, California, 92317.** The hearing shall begin at 9:30 a.m. on February 6, 2014, the first day of hearing, at 1:30 p.m. on Monday, February 10, 2014, and at 9:00 a.m. every other day, unless otherwise ordered.

The District shall ensure that the hearing room is configured into a courtroom setting and shall have at a minimum 1) a table for Parent and her representatives; 2) a table for the District's legal representative and the District's representative; 3) a table for the witness; and 4) a table for the ALJ, near an electrical outlet. The District shall provide drinking water to all parties, witnesses and the ALJ. The water does not have to be bottled. 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 if the hearing has not concluded.

The District shall also ensure that a separate and private room is available near the hearing room, for Parents and their representatives during recesses and breaks

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 were discussed with the parties at the prehearing conference and are listed below.

a) Has the District materially failed to implement Student's operative individualized education program, thereby denying him a free appropriate public education (FAPE) by:

i. Failing to provide a one-to-one aide who is capable of biking at Student's pace for the spring and fall practices of the District's mountain bike team; and

ii. Failing to provide Student with 90 minutes per week of speech and language therapy?

b) Do Student's needs and behavioral patterns require him to have a male one-to-one classroom aide at school in order to receive a FAPE?

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 represent that they have served 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 included in the exhibit lists and not previously exchanged shall not be admitted into evidence at the hearing 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 disclosed in the party's prehearing conference statement except for good cause shown, and at the discretion of the ALJ.

The parties are ordered to meet and confer by February 4, 2014, as to the schedule of witnesses. At the beginning of the first day of hearings, the parties shall provide the ALJ with a list of all witnesses who are scheduled to testify, along with their date and time of

testimony. The parties have agreed to coordinate the availability and order of testimony of witnesses. The parties shall ensure that there is a witness available to testify at all times during the hearing, and to ensure that the hearing is completed as scheduled.

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. Each witness shall only testify once, unless called as a rebuttal witness. Unless otherwise permitted, only one round of redirect and/or re-cross examination shall be permitted.

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.

7. Motions. The parties have requested permission to record the due process hearing. Permission is granted subject to the following conditions: Each party may record all or any part of the hearing itself, while the ALJ presiding at the hearing is on the record, so long as the recording device is silent and unobtrusive. The ALJ will not stop the proceedings in order for the parties to change tapes, discs, or otherwise adjust their recording devices. Every time the ALJ goes off the record for any purpose, each party shall turn off its recording device. The parties shall not record any portions of any conversations of any party or witness or anyone present in the hearing room while the hearing is not in session and on the record. The parties will take their recording devices with them when they leave the hearing room. The OAH recording of the hearing is the official record and the parties may not rely on or cite to their personal recordings for any purpose related to the hearing, such as closing argument. **Only audio recording is permitted. No video recording is permitted**. Only Student's parents and/or legal representatives and the District's representatives at hearing, and/or the District's attorney may record the proceedings. No one else present may record the proceedings in any way.

No other prehearing motions are pending or contemplated. Any prehearing motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not made prior to or during the prehearing conference of January 27, 2014.

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

9. 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. No eating shall be permitted in the hearing room while the ALJ is on the record.

10. Compensatory Education/Reimbursement. It is Student's burden to prove the necessity and type, duration, and frequency of any remedy he is requesting. If Student is requesting reimbursement as a remedy, he must present admissible evidence of these expenditures, or a stipulation to the amount of expenditures, as part of his case in chief.

11. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for translation services.

12. Hearing Open To the Public. At the request of Student's parent, the hearing will be open to the public. The District is directed to provide additional seating in the hearing room for members of the public who wish to attend the hearing, to the extent permitted by the size of the room. The public seating shall be placed so that it does not obstruct or otherwise interfere with the ability of the ALJ, the parties, or the witnesses to participate in the hearing.

13. 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.

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

IT IS SO ORDERED.

Dated: January 28, 2014

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings