BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: ASPIRE CENTRAL VALLEY REGIONAL OFFICE, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013040872 ORDER FOLLOWING CONTINUED PREHEARING CONFERENCE

On May 20, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Rebecca Freie, Office of Administrative Hearings (OAH). Ms. Sue Shalvey and Ms. Meghann Cazalle appeared on behalf of Aspire Central Valley Regional Office (Aspire). Parent appeared on behalf Student and Parents (Student). The PHC was recorded. This PHC was held so that the parties could be given additional instructions concerning the due process hearing that is scheduled to begin on May 22, 2013, and to rule on Aspire's motion to exclude witnesses that was recently filed with OAH.

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

1. Hearing Dates, Times, and Location. The hearing dates and location indicated on the original order following PHC conducted by ALJ Margaret Broussard are confirmed. However, on May 22, 2013, the hearing shall end at 4:00 p.m.

At a minimum for the hearing, the room 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 District's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table. The District shall ensure that all parties and the ALJ have drinking water available to them, and there shall be a box of tissues on the witness table.

2. Witnesses. On May 16, 2013, Aspire filed a motion to exclude witnesses. In essence, Aspire asked that witnesses who Parent wished to call which Aspire deemed to be unnecessary be excluded, and that Parent be required to subpoena those witnesses. However, the ALJ conducting a due process hearing will make the determination as to whether specific witnesses a party wishes to call should be allowed to testify.

At the PHC conducted by ALJ Broussard, the parties were ordered to make witnesses under their control available for the hearing. This means that employees of Aspire may be called as witnesses by Parent, without the need to subpoena them as witnesses, or pay

witness fees. In addition, persons who work at Aspire pursuant to an agreement with a school district or other agency may also be called as witnesses by Parent, without the need to subpoena them as witnesses, or pay witness fees.

Parent indicated that she may call an employee of the special education local planning area (SELPA). This person will need to be subpoenaed by Parent. However, if this witness demands a witness fee, it may be $35.00 per day, plus $.20 per mile, as provided by Government Code section 68093. The $150.00 fee quoted by the District in its motion pursuant to Government Code 68096.1 is not applicable in these proceedings.

In its motion to exclude witnesses, Aspire listed 10 witnesses it intends to call, with a tentative schedule. At the beginning of the hearing the parties shall be prepared to give a time estimate for direct and cross examination for each of those witnesses. When Aspire has completed the presentation of its case, Parent shall be prepared to make an offer of proof as to each witness she intends to call, and the ALJ will determine whether that witness is likely to provide relevant evidence that is not redundant or duplicative. If any of these witnesses are employed at Aspire, or performing services at Aspire pursuant to a contract, Aspire shall make these witnesses available to testify.

Neither party shall be permitted to call any witnesses not disclosed in the party's prehearing conference statement except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for cross-examination of 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 witnesses' testimony.

3. Scope of Witness Examination. If Parent intended to call a witness that the District calls when presenting its case in chief, Parent shall be permitted to expand the cross examination of that witness to issues Parent wishes to present, subject to the ALJ's determination that those issues are relevant. However, 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.

IT IS SO ORDERED.

Dated: May 21, 2013

/s/
REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings