BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: STUDENT, v. CAPISTRANO UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2012120545
CAPISTRANO UNIFIED SCHOOL DISTRICT, v. STUDENT.	OAH CASE NO. 2012120173 ORDER FOLLOWING PREHEARING CONFERENCE

On April 24, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Susan Ruff, Office of Administrative Hearings (OAH). Tim Jon Runner, educational advocate, appeared on behalf of Student. Sundee Johnson, Attorney at Law, appeared on behalf of the Capistrano Unified School District (District). The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall be held on May 6, 7, 8 and 9, 2013, and shall continue day to day, Monday through Thursday, as needed at the discretion of the ALJ. The hearing shall begin on May 6, 2013, at 1:30 p.m. and at 9:00 a.m. on each subsequent day of hearing.

The hearing shall take place at the District's offices located at 33122 Valle Road, San Juan Capistrano, California 92675.

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. The issues at the due process hearing are listed below.

Student's Issues:

a) Did the District deny Student a free appropriate public education (FAPE) by offering him an inappropriate placement?

b) Did the District deny Student a FAPE because it failed to offer him a placement in the least restrictive environment (LRE) appropriate to meet his needs by failing to offer him class time and sufficient free time with non-disabled peers?

c) Did the District deny Student a FAPE by failing to perform an adequate triennial assessment because the assessors failed to observe Student in his classes while school was in session?

District's Issue:

d) Did the District's individualized education program (IEP) offer as described in the IEP's dated May 1, May 24, June 11, June 18, and September 14, 2012, and as modified by letter on October 3, 2012, offer Student a FAPE in the LRE appropriate to meet his needs?

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 consecutively paginated, for example by Bates-stamping. Each exhibit binder shall contain a detailed table of contents. 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.

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 District agrees to make current District employees available to testify in Student's case-in-chief without need for subpoena upon reasonable notice. 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.

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.

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.

Student's motion to allow the witnesses from Utah to testify telephonically is granted. By noon on April 25, 2013, the District's counsel shall inform Student's advocate whether the District intends to call any of the Utah witnesses as part of the District's case. If the District intends to call any of those witnesses, the District shall supply two full copies of the District's exhibit books to Student's advocate to be sent to Utah. If the District does not intend to call any of the Utah witnesses as part of the District's case, Student shall be responsible for supplying copies of both parties' exhibit books to the Utah witnesses for their use during the hearing. The District shall make certain that the hearing room has sound equipment that allows everyone in the room to hear the telephonic witnesses and the witnesses to hear those in the hearing room.

7. Order of Presentation of Evidence. This matter is consolidated, and involves two parties. The order of presentation of evidence shall be as follows: Student shall present his case-in-chief first, and the District shall present its case-in-chief second.

Where Student and the District intend to call the same person to testify, each party will examine the witness immediately after the other party, so the witness will only need to be called to the witness stand once, unless needed to be recalled as a rebuttal witness.

8. Motions. No pretrial motions are pending or contemplated (besides the motion for telephonic testimony described above). 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 PHC.

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

10. 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. There is to be no recording of the hearing by any party without prior permission by the ALJ.

11. Compensatory Education/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.

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

13. Hearing Closed To the Public. At the request of the parent, the hearing will be closed to the public.

14. 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 **4:00 P.M**. ON THE FRIDAY 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.

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

IT IS SO ORDERED.

Dated: April 24, 2013

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings