

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENTS ON BEHALF OF STUDENT,	OAH CASE NO. 2012080113
v.	
EL CENTRO ELEMENTARY SCHOOL DISTRICT.	
EL CENTRO ELEMENTARY SCHOOL DISTRICT,	OAH CASE NO. 2012100380
v.	
PARENTS ON BEHALF OF STUDENT.	ORDER FOLLOWING PRE-HEARING CONFERENCE OF FEBRUARY 20, 2013

On February 20, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Darrell Lepkowsky, Office of Administrative Hearings (OAH). Michelle Ortega, Attorney at Law, and Heyman Hakimi, appeared on behalf of Student. Dina Harris, Attorney at Law, appeared on behalf of the El Centro Elementary School District (District). The ALJ recorded the PHC.

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 26, 27, 28, 2013, and March 4, 5, 6, and 7, 2013**, at the District's offices located at 1256 Broadway, El Centro, California 92243. The hearing shall begin at 9:30 a.m. on February 26; at 1:30 p.m. on March 4, 2013; and at 9:00 a.m. on all other days, unless otherwise ordered.

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.

The District shall ensure that the hearing room is configured into a courtroom setting and shall have at a minimum 1) a table for Student's representative; 2) a table for 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. The District shall also provide a meeting room to be available during break for Student and his representatives.

2. Issues and Proposed Resolutions. The issues at the due process hearing are listed below.

Student's Issues:

a) Did the District commit procedural and substantive violations of the Individuals with Disabilities Education Act (IDEA), thereby denying Student a free appropriate public education (FAPE) for the 2011-2012 school year and extended school year, by failing to:

- i. Offer an appropriate placement and supports (specifically behavioral supports);
- ii. Offer an appropriate placement in the least restrictive environment;
- iii. Offer appropriate frequency, duration, and type of designated instructional services; and
- iv. Devise appropriate goals and objectives in all areas of suspected need?

b) Did the District commit procedural and substantive violations of the IDEA, thereby denying Student a FAPE for the 2012-2013 school year and extended school year, by failing to:

- i. Offer an appropriate placement and supports;
- ii. Offer an appropriate placement in the least restrictive environment;
- iii. Offer appropriate frequency, duration, and type of designated instructional services;
- iv. Devise appropriate goals and objectives in all areas of suspected disability; and
- v. Provide appropriate behavior interventions?

District's Issues:

c) Did the District's offer to Student of placement and services in its August 27, 2012 individualized education program provided a legally sufficient FAPE to Student?

d) If the District offered FAPE, may the District implement the offer of placement and services without parental consent if Student's parents want special education and services for Student from the District?

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.

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 unless it is supported by good cause, and 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 the close of business on February 22, 2013, as to the schedule of witnesses. The parties have agreed to coordinate the availability and order of testimony of witnesses to 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. At the start of the hearing, the parties shall provide the ALJ with a list of the witnesses that indicates the date and time each is scheduled to testify.

The parties are encouraged to review and shorten their witness lists prior to the hearing, bearing in mind that evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear.

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. Unless otherwise ordered, only one round of redirect and re-cross examination will 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.

Student has moved to permit Dr. Susan Fosnot and Ms. Susanne Smith Roley to testify by phone due to their distance from the District's offices. The District did not oppose the motion. Student's motion is granted. The District has agreed to provide a telephone with a speaker for use during the telephonic testimony.

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 first and then the District shall present its case. If a witness is to be called by more than one party, that witness will testify on direct only once.

8. Motions. No other pretrial motions are pending or contemplated. 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 of February 20, 2013.

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.

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 Student's parents, 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 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.

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

Dated: February 20, 2013

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings