

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WILLIAM S. HART UNION HIGH
SCHOOL DISTRICT.

OAH CASE NO. 2013051148

ORDER RE: (1) SUBMISSION OF
TRANSCRIPT EXCERPTS, (2)
SUBMISSION SCHEDULE AND (3)
CLOSING BRIEFS

On the last day of hearing, Student sought to introduce as rebuttal evidence a transcript of an audio recording of the January 23, 2012 individualized education program (IEP) team meeting for Student. The William S. Hart Union High School District (District) objected on several grounds. In accordance with the discussion on the record, the undersigned administrative law judge (ALJ) hearing the matter issues the following order:

1. Submission of Transcript Excerpts. Student and District may submit excerpts of the transcript of the audio recording of the January 23, 2012 IEP for rebuttal purposes only, as a joint exhibit per the submission schedule set forth in paragraph 2, below. The exhibit shall be marked as Student's exhibit S-52 for identification purposes only.

The transcript excerpts may include statements made by Mr. Pendleton, one of Student's special day class (SDC) teachers, at the January 2012 IEP team meeting. At hearing, Mr. Pendleton invoked his Fifth Amendment privilege against self-incrimination as to a single event in which he is alleged to have touched Student on the chin in an attempt to turn Student's face to establish eye contact, on the grounds that he had been threatened with civil and criminal prosecution by Student's counsel for that action. Mr. Pendleton did not testify concerning the alleged event at hearing, but did testify concerning Student's conduct and progress in the classroom, and statements made at the January 2012 meeting.

A witness to a civil proceeding has the right to decline to answer questions which may tend to incriminate him in criminal activity. (*Cramer v. Tvars* (1979) 23 Cal.3d 131, 137.) Mr. Pendleton was not compelled to testify concerning his alleged touching of Student's chin in this due process hearing; however, he did testify as to other matters relevant to this proceeding. If and to the extent this witness made voluntary statements at a public IEP team meeting in January 2012 that may or may not impeach him as a witness on those matters to which he did testify, Student may offer those prior statements into evidence, and District may raise objections or move to exclude those prior statements, as set forth below.

2. Submission Schedule. The parties shall submit their proposed post-hearing evidence, objections and moving papers as follows:

(a) By 5:00 p.m. on October 28, 2013, by fax or email, Student shall serve District with a copy of all transcript excerpts Student intends to offer into evidence;

(b) No later than 5:00 p.m. on October 30, 2013, the parties shall meet and confer concerning (i) any discrepancies in the transcription of the audio recording, (ii) any objections that District may have to admission of the transcript excerpts into evidence, (iii) any counter excerpts that District will seek to have admitted into evidence in response to Student's excerpts if admitted into evidence, and (iv) creation of a joint exhibit consisting of transcript excerpts;

(c) By 5:00 p.m. on November 1, 2013, by fax or email, District shall serve Student with notice of any asserted transcription inaccuracies, counter transcript excerpts, and proposed objections or grounds for exclusion of Student's excerpts;

(d) By 5:00 p.m. on November 4, 2013, Student shall file with OAH by fax, and serve on District by fax or email, a joint exhibit of transcript excerpts, to be prepared as follows: The joint exhibit shall contain only those pages of the transcript of the audio recording that contain the statements in rebuttal, or response to rebuttal, sought to be introduced into evidence by the parties. The transcript shall include both versions of a statement if there is a dispute regarding the accuracy of transcription. The joint exhibit shall be submitted in a double spaced format, with each line of text and page separately numbered. The joint exhibit shall clearly designate on the transcript (by underlining, italics, or other identified method that will copy into black and white) those statements that are sought to be introduced by Student, and those sought to be introduced by District. Also by 5:00 p.m. on November 4, 2013, District shall file with OAH, and serve on Student by fax or email, its objections to admission of Student's proffered transcript excerpts and motion to exclude, if any; and

(e) By 5:00 p.m. on November 7, 2013, Student may file a response to any objections or motion filed by District with regard to the proposed evidence.

No audio recording shall be filed by either party until and unless requested by the ALJ by subsequent order.

3. Closing Briefs. At the joint request of the parties, as set forth on the record, this matter has been continued to November 11, 2013 for submission of closing briefs. Closing briefs shall be filed with OAH by fax, and served on the other party, no later than 5:00 p.m. on November 11, 2013.

IT IS SO ORDERED.

Dated: October 25, 2013

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings