

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

CORONADO UNIFIED SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2014060727

PARENT ON BEHALF OF STUDENT,

v.

CORONADO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014050511

ORDER FOLLOWING PREHEARING
CONFERENCE; GRANTING
CONSOLIDATION AND
CONTINUANCE

On June 23, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Darrell Lepkowsky, Office of Administrative Hearings. Andrea M. Tytell, Attorney at Law, appeared on behalf of Student. Ernest Bell, Attorney at Law, appeared on behalf of the Coronado Unified School District (Coronado). 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 take at the Coronado's offices, located at 201 Sixth Street, Coronado, California, 92118, on September 2, 3, 4, 9, 10, and 11, 2014, and continuing day to day, Monday through Thursday, at the discretion of the ALJ.** The hearing shall start at 1:30 p.m. on September 2, 2014, and at 9:00 a.m. all other days, unless otherwise ordered.

Coronado shall ensure that the hearing room is configured into a courtroom setting and shall have at a minimum 1) a table for Parents and their representative; 2) a table for Coronado's legal representative and special education representative; 3) a table for the witness; and 4) a table for the ALJ, near an electrical outlet. Coronado 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.

Coronado shall also ensure that a separate and private room is available near the hearing room, for Parents and their representative 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 for Hearing. The issues at the due process hearing were discussed with the parties at the PHC and are listed below.

Coronado’s Issue:

a) Did Coronado’s March 20, 2014 offer of placement, program, and services, as well as its May 27, 2014 offer of extended school year services, constitute a free appropriate public education (FAPE) in the least restrictive environment for Student?

Student’s Issues:

b) Did Coronado deny Student a FAPE in its March 5, 2014, and March 20, 2014 amendments to Student’s October 10, 2013 individualized education program by failing to:

i. Address Student’s mental health challenges and health manifestations of her eating disorder;

ii. Consider all information from Student’s treating psychologist, her psychiatrist, and the University of California at San Diego’s Eating Disorders Clinic;

iii. Acknowledge that Student’s mental and physical health issues manifested at school as well as at home;

iv. Consider reports from Student’s parents regarding Student’s social difficulties at school; and

v. Develop new goals to address Student’s increasing mental health issues?

c) Did Coronado fail to provide Student with a FAPE from May 2012, to the present by:

- i. Failing to provide sufficient and appropriate strategies and interventions to address Student's unique needs;
 - ii. Failing to convene an emergency IEP team meeting when it had become clear that Student's mental health issues were increasing;
 - iii. Failing to consider the input of Student's parents regarding the gravity of Student's mental and physical health needs;
 - iv. Developing goals that required Student to self-advocate when she was not capable of doing so and that failed to include strategies and interventions designed to assist Student in mastering each goal; and
 - v. Failing to consider the concerns of Student's parents regarding their belief that Student had not been accessing her curriculum or the educational process?
- d) Did Coronado deny Student a FAPE by failing to offer her a residential placement that included a strong therapeutic milieu during the March 5, 2014, and March 20, 2014 IEP amendment meetings?
- e) Did Coronado deny Student a FAPE in her October 10, 2013, March 5, 2014, and March 20, 2014 IEP's by failing to:
- i. Develop a behavior support plan to address Student's issues with school avoidance, anxiety, executive functioning, emotional regulation, and stress management; and
 - ii. Offer her extended school year programming and services in her October 10, 2013, March 5, 2014, and March 20, 2014 IEP's?
- f) Did Coronado deny Student a FAPE by failing to begin home hospital instruction in a timely fashion after it offered her home hospital instruction on January 23, 2014?
- g) Did Coronado fail in its child find obligations to Student by not identifying her as a student in need of special education and related services when Student returned from winter break in January 2013?

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 an Coronado 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 shall serve 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 unless good cause is shown 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 prior to the first day of the hearing as to the schedule of witnesses. On the first day of the hearing the parties shall provide the ALJ with a written list of witnesses, indicating the date and time each will 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.

The parties shall attempt to reach agreement on a witness list for the first day of hearing. Coronado shall have witnesses available in case agreement on a witness list is not reached. The parties shall be prepared at the end of each day of hearing to discuss the witnesses to be presented the next day and the time the testimony of each such witness is expected to take.

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 re-direct 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.

At this time, neither party anticipates moving for telephonic testimony.

7. Order of Presentation of Evidence. This matter is consolidated, and involves two parties. Coronado shall present its case first, followed by Student's case. After the first direct and cross-examination, each party shall be limited to only those matters raised in the immediately preceding examination. If a witness is to be called by more than one party, the party first conducting cross-examination of that witness shall include in that examination all questions intended for the witness on direct examination, in order that each witness need only appear and testify once. Only one round of re-direct and/or re-cross examination shall be permitted, unless otherwise ordered.

8. Motions.

a) Coronado's Motion to Consolidate: Coronado filed a motion to consolidate Student's case number 2014050511 with Coronado's newly filed complaint in case number 2014060727. Student agreed to the consolidation. Coronado's case and Student's case involve common questions of law and fact, many of the same witnesses and much of the same documentary evidence such that consolidation will further the interests of judicial economy. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].) Accordingly, Coronado's request for consolidation is granted. Coronado's case in OAH Case Number 2014060727 shall be the lead case for determination of the 45-day timeline to issue a written decision. All dates in Student's case, OAH Case No. 201405051, as well as in Coronado's case, are hereby vacated. The consolidated matters are continued as discussed below.

b) Coronado's Motion to Continue: Student has agreed to Coronado's motion to continue this matter. This is the first continuance requested by either party. Good cause appearing, Coronado's motion to continue is granted. The dates are continued as follows:

**Telephonic Prehearing Conference: August 22, 2014, at 10:00 a.m.
Due Process Hearing (as stated above in paragraph one): September 2, 3,
4, 9, 10, and 11, 2014, starting at 1:30 p.m. on September 2, 2014,
and at 9:00 a.m. all other days, unless otherwise ordered.**

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 and 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 has indicated a need for special accommodation for any witness or party, or for translation services. If a party requires any accommodations, the party should inform the ALJ at the beginning of the hearing.

13. Hearing Opened to the Public. At the request of Parents, the hearing will be opened 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.

IT IS SO ORDERED.

DATE: June 23, 2014

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings