

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENTS ON BEHALF OF STUDENT,	OAH Case No. 2014030842
v.	
SPENCER VALLEY ELEMENTARY SCHOOL DISTRICT,	
SPENCER VALLEY ELEMENTARY SCHOOL DISTRICT,	OAH Case No. 2014030046
v.	
PARENTS ON BEHALF OF STUDENT.	ORDER DENYING STUDENT'S MOTION FOR PROTECTIVE ORDER

PROCEDURAL BACKGROUND

On July 10, 2014, on the second to last day of hearing in this matter, Student presented the testimony of one of his expert witnesses, an inclusion expert who works for another school district in California. The following day, Student moved for a protective order regarding the identity of the witness, asking that her name and employer be redacted from the Decision in this case, and that all parties, representatives, and witnesses in this case be ordered to refrain from discussing the witness's testimony. The request was prompted by communication from the witness to Student's educational representative that after her testimony, the witness received direct and implied threats and acts of intimidation regarding her employment as a result of her involvement in the case. These acts caused great anxiety for the witness requiring her to seek medical care.

On July 15, 2014, Student submitted a formal written motion regarding his request for the protective orders. On July 17, 2014, District filed a notice of non-opposition to Student's motion. District denied having discussed the witness's testimony with the other school district, indicated that it had no intention of doing so, but nonetheless did not oppose Student's motion.

DISCUSSION

In his motion, Student fails to indicate the content of the threats to his witness or who made the threats. Whatever the content and originator of the statements, it is extremely troubling that a witness to this or any other legal proceedings would suffer retaliation or any other retribution as a result of his or her testimony. However, Student provides no legal authority for his request to redact his witness's identity or that of her employer in the undersigned ALJ's pending Decision.

There are many reasons for denying Student's request. First, had these incidents not occurred now, there is no question but that the witness, as are all witnesses, would be identified in the Decision, which is a public record. The same negative consequences the witness has suffered now could therefore have happened as soon as her identity was revealed after issuance of the Decision. Additionally, the witness has numerous protections available, including seeking assistance and guidance from her union or from legal counsel. Finally, granting Student's motion would open the door in each OAH hearing to similar requests to redact the names of a variety of witnesses in anticipation of possible negative consequences of their testifying at the hearing. For these reasons, Student's motion for redaction is denied.

Student has also requested that the District, its representatives, and witnesses be ordered to refrain from discussing the witness's testimony with her employer. The ALJ has already made that admonishment. Student has provided no concrete evidence the admonishment was deliberately ignored. Student's motion is therefore denied.

IT IS SO ORDERED.

DATE: July 28, 2014

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings