BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: SALINAS UNION HIGH SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013070582 ORDER FOLLOWING PREHEARING CONFERENCE

On August 12, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Peter Paul Castillo, Office of Administrative Hearings (OAH). Daniel A. Osher, Attorney at Law, appeared on behalf of Salinas Union High School District (District), with attorney Aria Link present. LaJoyce L. Porter, Attorney at Law, appeared on behalf of Student. The PHC was recorded

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

1. Hearing Dates, Times, and Location. The due process hearing shall take place on August 20, 21, 22, and 23, 2013. The hearing shall begin at 9:00 a.m. and end at 5:00 p.m., except for August 20, 2013 when the hearing shall begin at 9:30 a.m., unless otherwise ordered. The hearing shall take place at the District's offices, located at 431 West Alisal Street, Salinas, California 93901.[1]

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

[1] At a minimum for the hearing, the room shall have separate tables capable of being moved into a courtroom configuration, as follows: (1) one table for Student's representatives; (2) one table for the District's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table. The District shall ensure that all parties and the ALJ have drinking water available to them.

Issue: Whether the District may exit Student from special education eligibility and cease providing Student with special education services?

Proposed Resolution: The District seeks an order that Student is no longer eligible for special education services and it may cease providing Student with special education services.

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. By 5:00 p.m. on August 13, 2013, the parties shall have served their evidence binders on each other in compliance with Education Code section 56505, subdivision (e)(7).[2] 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 it is supported by written declaration under penalty of perjury, 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 to the other party without a subpoena. 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, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

By 1:00 p.m. on August 19, 2013, the parties shall have and met and conferred regarding the witness order and by then each party shall serve on the other party and on the ALJ, the final witness list, including the anticipated order of the witnesses to be called at the hearing, an estimate of the length of time for the direct examination of each witness the party actually intends to call, along with time estimates for the testimony of any additional witnesses the party may call, depending on the flow of the hearing and the evidence.[3] The

[2] Due to the pending motion to consolidate, Student may send an electronic copy of his exhibits and then provide his evidence binder by 5:00 p.m. on August 15, 2013.

[3] Parties shall not mail a hard copy of any document to OAH that has already been filed by facsimile transmission.

District is ordered to make its employees reasonably available to testify. As the District lists 20 witnesses and Student nine, 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. Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

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.

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).) 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. Neither party requested telephonic testimony.

7. Motions.

Consolidation: At the prehearing conference, Student indicated that he filed a due process complaint on August 12, 2013, and requested that his complaint and the District's complaint be consolidated for hearing. The District indicated that it had not seen Student's complaint, but that it initially opposes the consolidation request. Accordingly, the District has until noon on August 14, 2013, to respond to Student's motion to consolidate.

Recording of Hearing: Student's request to audio tape the hearing is granted. The recording by OAH shall be official record of the hearing and no stoppages of the hearing will be granted to accommodate the parties' recording, and parties must cease recording when the ALJ informs the parties that the matter is off the record.

No additional pretrial motions are pending or contemplated than mentioned 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 prehearing conference of August 12, 2013.

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

9. 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 during the hearing unless permission to the contrary is obtained from the ALJ.

10. Special Needs and Accommodations. A Spanish language interpreter is required for Parents. OAH shall provide an interpreter.

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

12. Settlement. The parties are encouraged to continue their attempts 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. If a settlement is reached five business days or fewer before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact by telephone at (916) 263-0880. 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. IF A FULL AND FINAL SETTLEMENT IS REACHED AFTER 5:00 P.M. ON THE LAST BUSINESS DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035, AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. The ALJ will check for messages the evening prior to the hearing and the morning of the hearing.

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

IT IS SO ORDERED.

Dated: August 13, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings