

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ENCINITAS UNION SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2012020128

ORDER DENYING STUDENT'S
REQUEST FOR NEW DUE PROCESS
HEARING

On February 6, 2012, the Encinitas Union School District (District) filed a request for due process seeking a finding from the Office of Administrative Hearings (OAH) that certain of the assessments it administered to Student were appropriate and that, therefore, it was not required to fund independent educational evaluations (IEE's) requested by Student's parents. OAH granted several continuances in the matter, most of them at the request of Student. At a prehearing conference (PHC) held on August 27, 2012, the Administrative Law Judge (ALJ) convening the PHC granted Student yet another continuance in order for Student to file an exhibit list and witness list, which he had failed to do.

On August 28, 2012, Student, through his mother, filed a document in which Student purported to amend his request for IEE's to broaden the scope of his previous request to the District. Student, by this document, sought to broaden the scope of the due process hearing to include these additional IEE requests. Another PHC was convened on September 5, 2012. The ALJ at the PHC informed Student's mother, who represents Student in pro per, that the issues for the due process hearing were those stated by the District in its due process filing of February 6, 2012. The ALJ informed Student's mother that an opposing party cannot amend a due process request. Therefore, Student could not broaden the issues for the due process hearing.

The due process hearing in this matter was convened by the undersigned ALJ on September 10, 11, and 12, 2012. Student was again represented by his mother. Student again attempted to broaden the issues for the due process hearing, objecting to the issue for hearing as stated in the Order Following Prehearing Conference. The undersigned ALJ again explained to Student's mother that the scope of the hearing was defined by the District in its due process request and that Student, as opposing party, could not amend, broaden, or change the issues.

At the conclusion of the hearing, the ALJ granted the parties' request to file written closing briefs by no later than October 1, 2012. The District timely filed its brief. However, on October 1, 2012, Student filed a motion for one-week continuance in order to file his

argument. The ALJ granted his request. As of today's date, Student has not filed a brief. Instead, on October 10, 2012, Student filed what appears to be a motion to re-hear this case.

Student raises the same issues in the instant motion as he did at the PHC and at hearing. Student appears to contend the following:

1. He now wishes to request IEE's for any and all assessments that the District has ever administered to him since he was first found eligible for special education in October 2009.
2. All of the District's assessments have failed to properly assess Student.
3. The District has failed to assess Student in all areas of suspected disability.
4. The District has failed to appropriately place Student.
5. The District has failed to develop appropriate individualized education programs for Student.
6. The District has failed to offer Student a section 504 accommodation plan without evaluating Student to see if he qualifies for one.
7. The District has made unilateral changes to Student's placement and/or programming.
8. The related services provided to Student are inadequate.
9. The District has improperly reclassified Student's special education eligibility.

Student's motion appears to request that the due process hearing in the instant case be re-opened so that all these issues can be heard.

Student has been informed by at least two ALJ's that he has every right to file due process requests to raise any issue he has regarding the District's provision to him of special education and related services or as to the assessment process.¹ Student has equally been informed that he cannot amend, broaden, alter, or re-write the issues raised by the District in the instant due process request. If Student wishes the above issues to be heard by OAH, he must file his own request for due process. The District filed a due process request regarding the validity of four specific assessments: its 2010 occupational therapy assessment, and the psycho-educational, speech and language, and functional behavioral assessments conducted in January through March 2011. Therefore, those are the only issues properly addressed in

¹ The Office of Administrative Hearings does not, however, have jurisdiction over issues concerning section 504 plans.

the instant case and are the only issues which the ALJ will address in her pending Decision in this matter.

Student's motion to re-open the record in this case to hold a new due process hearing is DENIED. Student has raised significant issues concerning his education. However, if he wants those issues addressed by OAH, he must file his own due process request.

IT IS SO ORDERED.

Dated: October 11, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings