

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT,

v.

STUDENT.

OAH CASE NO. 2012101077

ORDER GRANTING DISTRICT'S
MOTION TO EXCLUDE WITNESSES

On October 29, 2012, the Newport-Mesa Unified School District (District) filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (complaint) naming Student as respondent. The sole issue pled in the complaint was whether the April 4, 2012 annual Individualized Education Program (IEP), along with IEP addendums of June 20, 2012, and September 28, 2012, were designed to meet Student's unique needs and reasonably calculated to meet state and federal law requirements.

On January 4, 2013, Student, by and through her advocate, filed with OAH a Prehearing Conference (PHC) Statement which listed as witnesses to be called by Student. Student listed five potential witnesses which included Student, her mother, her father, and two other individuals who were both listed as "Friend and orange County Reporter." Student stated that these two individuals, Yvette Cabrera and Adami Rivera, would "testify as to knowledge of the Pupil, Pupil's FAPE [free appropriate public education] needs and Resolution Pupil request (sic)."

On January 7, 2013, the District filed its "Motion to Exclude Members of the Press from Testifying." Student has not filed a response to the motion.

APPLICABLE LAW AND DISCUSSION

The District objects to the testimony of Ms. Cabrera and Mr. Rivera on grounds that (1) they are reporters and Student is attempting to circumvent the confidentiality of due process hearings, (2) they do not have sufficient knowledge of the subject matter, and (3) they are not qualified to render opinion /expert testimony. The fact that the two are newspaper reporters is not relevant to determining whether they are competent witnesses.

Student can easily evade the confidentiality of the hearing by requesting that the hearing be open to the public.¹

Only evidence that is relevant is admissible. (Evid. Code, §§ 350 and 351.) Testimony of a witness concerning a particular matter is inadmissible unless the witness has personal knowledge of the matter. (Evid. Code, § 702, subd. (a).) Where the opposing party objects, as is the case here, the party seeking to introduce the testimony must demonstrate that the witness has personal knowledge regarding the subject of the testimony prior to the witness testifying. (Ibid.)

Expert testimony is limited to subjects that are sufficiently beyond common experience that the opinion of an expert would assist the trier of fact and is based on matter including special knowledge, skill, experience, training, and education related to the subject of the testimony. (Evid. Code, § 801.) Expert opinion is limited to those subjects that are beyond the competence of persons of common experience, training, and education. (*People v. Cole* (1956) 47 Cal. 2d 99, 103.)

By the filing of the motion, the District is objecting to the testimony of Ms. Cabrera and Mr. Rivera. The burden falls on Student to demonstrate that Ms. Cabrera and Mr. Rivera (1) have personal knowledge regarding the subject matter that they will testify to, and (2) that they have the special knowledge, skill, experience, training and education to render testify as an expert relating to the sufficiency of the District IEP's. By not responding to the motion, Student has failed to meet his burden.

ORDER

The District's motion to exclude the testimony of Yvette Cabrera and Adami Rivera is granted.

IT IS SO ORDERED.

Dated: January 15, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings

¹ The District's relying on Attorney General Opinion No. 02-406 (August 26, 2002) is misplaced as the opinion only relates to attendance at IEP meetings.