BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. PARLIER UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015100421 ORDER FOLLOWING PREHEARING CONFERENCE

On January 22, 2016, a telephonic prehearing conference was held before Administrative Law Judge Joy Redmon, Office of Administrative Hearings. Mother, assisted by Student's advocate Alonso Padron, appeared on Student's behalf. Also present during the PHC on Student's behalf were advocates Juan Sandoval and Eliza Padron. Attorney Anahid Hoonanian appeared on behalf of the Parlier Unified School District. Certified interpreter William Zubia provided English to Spanish and Spanish to English translation throughout the PHC. The PHC was recorded.

PRELIMINARY MATTER

On January 22, 2016, OAH received a document from Mother titled, "Declaration of Violation of Parent and Students' [sic] Right of and to Participate in (FAPE) [free appropriate public education], Failure to Hold IEP [individualized education program] Meeting within 30 Days and Amendment to Document List." The document contained an issue not previously pled in Student's complaint; specifically that Parlier failed to convene an IEP team meeting within 30 days of Mother's December 15, 2015, request for a meeting. At the beginning of the PHC, the undersigned ALJ noted that this was a new contention not previously pled and inquired regarding whether or not Student intended to proceed on the previously pled issues only or was seeking to amend his complaint. After a brief discussion, Mr. Padron informed the ALJ that Student elected to proceed on the previously filed issues only and was not seeking to amend his complaint to add this contention. Accordingly, the December 15, 2015, request to schedule an IEP team meeting is outside the scope of the hearing, and will not be an issue decided in this matter. Thereafter, the PHC proceeded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on February 2, through February 4, 2016, and if not concluded continuing day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at Parlier's

offices located at 900 Newmark Ave., Parlier, California.[1] The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 a.m. all other days, unless otherwise ordered.

Parlier is to provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities. Parlier has not yet certified that it would provide a facility for this case that complied with the law. **Parlier shall certify to OAH within two days of the date of this order that it will provide a facility that complies with the law.**

Prior to the beginning of the hearing, Parlier shall ensure that the hearing room is configured into a courtroom setting and shall have at a minimum (1) a table for Student and his representatives; (2) a table for Parlier's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. Parlier shall provide drinking water and tissue to all parties, witnesses, and the ALJ. 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. District shall ensure that the hearing room and access to it are in compliance with the Americans with Disabilities Act.

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, and the proposed resolutions, are listed below.

Issue 1: Did Parlier deny Student a FAPE during the 2014-2015 school year by failing to offer and provide an appropriate disciplinary strategy that met Student's needs?

Issue 2: Did Parlier significantly impede Mother's opportunity to participate in the decision-making process to formulate Student's IEP that resulted in a denial of FAPE during the 2015-2016 school year by removing

[1] During the PHC, Mr. Padron noted that Student expected approximately 20 observers to attend the hearing. The ALJ instructed Parlier's counsel to determine if the room was large enough to accommodate 20 observers and, if not, to notify OAH and Student in writing as soon as possible regarding an alternate location.

consent for Mother to enter the school site on October 1, 2015, for 28 days?[2]

Issue 3: Did Parlier deny Student a FAPE during the 2015-2016 school year through the date of hearing by failing to :

a. offer and provide an appropriate disciplinary strategy that meets Student's needs;

b. offer and provide Student an instructional aide during math and English language arts in the general education classroom;

c. offer and provide dedicated staff monitoring during morning and lunch recess;

d. implement Student's November 2015 IEP, specifically regarding:

i. the accommodation of short breaks between assignments or when Student's is overwhelmed;

ii. permitting Student to participate in physical education and other classes due to continuous referrals to the office; and

iii. specialized academic instruction of 450 minutes per week?

PROPOSED RESOLUTIONS: Student seeks his IEP be revised to include appropriate positive behavioral intervention strategies that are implemented with fidelity and from trained staff; supports and other strategies such as response to intervention techniques; an independent evaluation to identify additional possible disabilities; possible change in placement to Riverview school in Reedley, California; an opportunity to meet with a disinterested party or the local education agency for a resolution.[3]

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[2] Student also alleged that Parlier denied her meaningful participation by refusing to permit her to complete an opening statement in the hearing conducted for her to gain access to the school campus. Parlier objected to this issue asserting that it was outside of OAH's jurisdiction. After listening to oral argument on the topic, the ALJ ruled that this contention was not within OAH's jurisdiction and dismissed it as an issue.

[3] Student also included a request for an inter-district transfer and the right to proceed with a civil action with respect to the complaint as proposed resolutions. Parlier objected

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 page of the exhibits shall be individually numbered. The exhibit binders 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 the ALJ, and a second exhibit binder for 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 only be admitted into evidence at the hearing at the discretion of the ALJ.

4. Witnesses. Each party is responsible for procuring their own witnesses at hearing. 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 timely except for good cause shown and at the discretion of the ALJ.

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 were ordered to meet and confer and prepare a proposed witness schedule to be given to the ALJ on the first day of hearing. The District shall have witnesses available in case agreement on a witness list is not reached. Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for direct and cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. Additionally, 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.

During the PHC, Parlier requested to have superintendent Edward Lucero, assistant superintendent Lou Saiphan, and principal Macedo removed from Student's witness list arguing that they are not relevant witnesses to the issues alleged in this matter. Student objected requesting they be permitted to testify. After argument, the ALJ ruled that Mr.

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asserting that OAH lacks jurisdiction over an inter-district transfer and future civil actions. After discussion, Mr. Padron withdrew the request for an inter-district transfer and confirmed that Student only included the reference to a civil action as part of Student's exhaustion of administrative remedies. Accordingly, they are not included as proposed resolutions herein.

Macedo could be called as a witness regarding Student's Issue 2. The ALJ further ruled that Student failed to establish the relevance of Mr. Lucero and Mr. Saiphan to the issues pled but permitted Student to renew the request at hearing if their testimony is still sought. The ALJ ruled that if the request is made it will be subject to an offer of proof.

5. Scope of Witness Examination. Each witness shall be called to testify only once, except for rebuttal purposes, and all parties shall examine the witness on all issues when the witness is first called. 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. The order in which the parties present their cases in chief shall be subordinate to the need for each witness to appear only once.

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. Neither party anticipates requesting telephonic testimony at this time.

7. Electronic Recording of Hearing.

a. Audio Recording. Parlier's motion to make an audio recording of the hearing is granted, subject to the following conditions: 1) that OAH's recording is the only official recording; 2) that the recording will be turned on and off at the same time as the ALJ's recording, in order to avoid recording conversations while off the record; and 3) that operation of the party's recording mechanism will not be allowed to delay the hearing. If Student desires to make such a recording, the same conditions shall apply.

b. Video Recording. No party, witness or anyone else present may make any video recording of any part of the proceedings. Any person doing so shall be subject to sanctions.

8. Order of Presentation of Evidence. In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) Here, Student is the petitioning party. Accordingly, Student shall present his case-in-chief, followed by Parlier.

9. Motions. No pretrial motions are pending or contemplated. 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.

10. 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.

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

12. 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.

13. Special Needs and Accommodations. A Spanish language interpreter will be provided for Mother throughout the due process hearing. Additionally, one of Parlier's witnesses may need occasional breaks to accommodate her child's feeding schedule. At this time no other requests are anticipated.

A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the mediation or hearing may contact the assigned calendar staff, identified in the scheduling order, at (916) 263-0880, as soon as the need is known. Additional information concerning requests for reasonable accommodation is available on OAH's website at: http://www.dgs.ca.gov/oah/Home/Accommodations.aspx

14. Hearing Open To the Public. At the request of Student, the hearing will be open to the public.

15. 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.

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

IT IS SO ORDERED.

DATE: January 22, 2016

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings