BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2016080347
v.	ORDER FOLLOWING PREHEARING CONFERENCE, GRANTING REQUEST FOR CONTINUANCE AND SETTING PREHEARING CONFERENCE AND HEARING DATES
PARLIER UNIFIED SCHOOL DISTRICT.	

On September 2, 2016, a telephonic prehearing conference was held before Administrative Law Judge Cheryl Carlson, Office of Administrative Hearings. Parent Advocate Alfonso Padron, appeared on behalf of Student. Karen E. Gilyard, Attorney at Law, appeared on behalf of Parlier Unified School District. The PHC was recorded.

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

1. Parlier's Request to Continue Dates. On September 1, 2016, Parlier filed a motion to continue the PHC and hearing dates because of scheduling conflicts for Parlier's counsel. Both parties were given the opportunity to be heard as to the request for a continuance. Parent's advocate agreed with the request to continue all dates.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

The parties established good cause for a continuance. All dates are vacated and this matter will be heard as follows:

Prehearing Conference: September 30, 2016, at 1:00 p.m.

Due Process Hearing:	October 11, 2016, at 9:30 a.m., October 12 and October 13, 2016, at 9:00 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ.

The hearing shall take place at the Parlier High School Library, 603 3rd Street, Parlier, CA 93648. As ordered in the scheduling order, Parlier shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 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 shall inform OAH within two days of the date of this order that it is able to certify that it will provide a facility that complies with the law, and file that certification with OAH.

2. Notice to Witnesses. 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.

3. Other Matters. All other matters relevant to preparing for hearing, including clarification of the issues and identification of witnesses and exhibits, will be addressed at the telephonic PHC on September 30, 2016. The parties are ordered to file with OAH and serve on each other a PHC statement at least three business days prior to the PHC, as ordered in the August 11, 2016 Scheduling Order. The PHC statement shall include the following:

a. Each party's estimate of the time necessary to complete the Due Process Hearing;

b. Parent shall provide a clarification of the issues stated in her prehearing conference statement filed August 18, 2016 as follows:

i. As to whether Parlier failed in the IDEA's child find procedures, Student must provide facts as to when Parlier failed the child find procedures and what it failed to do;

ii. As to whether Parlier failed in creating a proper IEP by not including a Behavior Intervention Plan on 9/5/13: this issue shall be dismissed unless Parent alleges a legal exception to the two year statute of limitations;

iii. As to whether Parlier failed to provide parent an opportunity to participate in the identification and provision of a FAPE,

Student must provide facts as to when, what years, Parlier failed to do so; and describe how and what Parlier did or failed to do that prevented parent from participating;

iv. As to whether Parlier denied Student a FAPE by failing to conduct a timely appropriate assessment by qualified credentialed staff: Student must provide facts explaining why the assessment was not timely and appropriate; provide the date when Parent make a request for an assessment and what assessment she asked for; and state how staff were not qualified and credentialed and in what areas;

v. As to whether Parlier failed to provide Student with an appropriate behavior intervention plan within the IEP offer dated Feb 16, 2016: Student must state whether Parlier failed to offer a behavior plan at all; or, if a plan was provided on that day, how was it not appropriate;

c. The name of each witness the party may call at the Due Process Hearing, a brief summary of the subject of the expected testimony of the witness, and a description of the issue to which the testimony of the witness relates;

d. The name and address of each expert witness the party intends to call at the Due Process Hearing, a brief summary of the opinion that the expert is expected to give, and a description of the issue to which the testimony of the expert relates;

e. A list of documentary evidence that the party intends to present, and a description of any physical or demonstrative evidence; and

f. The need for an interpreter or special accommodation at the due process hearing.

4. Settlement. The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in

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writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. Dates for the PHC and hearing will not be vacated unless OAH received a letter of withdrawal or request for dismissal from Hayward, or unless otherwise ordered.

IT IS SO ORDERED.

DATE: September 6, 2016

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Cheryl Carlson
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CHERYL CARLSON
Administrative Law Judge
Office of Administrative Hearings