BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: STANISLAUS UNION SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2015040932 ORDER FOLLOWING PREHEARING CONFERENCE

On May 11, 2015, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Charles Marson, Office of Administrative Hearings . S. Diane Beall, Attorney at Law, appeared on behalf of the Stanislaus Union School District. Student's Father 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.

a. Request for Continuance of Hearing. Student's Father is traveling and may not be available for the currently set dates for hearing. Father requested a one-week continuance of the hearing so he can be present. Stanislaus did not object to the continuance.

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 for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

Father's unavailability constitutes good cause for a brief continuance of the hearing, which is therefore continued one week, to May 26, 27, and 28, 2015.

b. The hearing shall take place at the office of the Stanislaus County Special Education Local Plan Area, 1404 Stonum Road, Modesto, California 95351, in a room to be provided by Stanislaus. It shall take place on May 26, 27, and 28, 2015, and continue day-to-day thereafter, Monday through Thursday, at the discretion of the ALJ. On May 26, 2015, the hearing shall begin at 1:30 p.m. and end at 5:00 p.m., and on the remaining days the hearing shall begin at 9:00 a.m. and end at 5:00 p.m., unless otherwise ordered.

Stanislaus shall 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), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.[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.

A. Did Stanislaus comply with the procedural requirements of the Individuals with Disabilities Education Act and related laws in holding Student's annual individualized education program team meeting in the absence of Student's Parents?

B. Is Student no longer eligible for special education and related services, and may Stanislaus exit Student from, and cease providing him, special education and related services?

As resolutions, Stanislaus seeks an order answering the above two questions in the affirmative.

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 in a way that makes clear the party offering it (such as "S1" or "D2"). 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. Each party shall serve an exhibit binder containing

[1] At a minimum, the hearing 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 Stanislaus's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table.

its respective exhibits on the other party by 5:00 p.m. on May 19, 2015, in compliance with Education Code section 56505, subdivision (e)(7). 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.

a) 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. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses twice or out of order. Neither party shall be permitted to call any witnesses not disclosed in the party's prehearing conference statement and listed below, except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

b) At present, Stanislaus intends to call the following witnesses:

1) Chad Andreoni, School Psychologist;

2) Judy Chavez, Administrative Assistant;

3) Kathi Ellis, special education teacher;

4) Regina Hedin, Director, Stanislaus Special Education Local Plan Area;

5) Ronda Howser, autism inclusion specialist;

6) Cathy Hudson, Office Manager, Chrysler School;

7) Julie Jerome, School Nurse;

8) Amy Rank, kindergarten teacher;

9) Cherlyn Smoke, process server,

10) Brittany Top, speech and language pathologist; and

11) Michele Wolf, Assistant Superintendent.

c) At present, Student has not filed a prehearing conference statement or identified any witnesses he intends to call.

5. Scope and Order 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. The order in which the parties present their cases in chief shall be subordinate to the need for each witness to appear only once, so the parties shall be required to establish their cases in chief during the first appearance of a witness.

6. Telephonic Testimony. At present no party intends to present a witness by telephone. A party seeking to present a witness by telephone shall move in advance for leave to do so; 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.

7. Electronic Recording of Hearing.

a. Audio Recording. Student's request 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.

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. Motions. At present no prehearing motions are pending or contemplated. Any motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not made prior to or during this prehearing conference.

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

10. 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.

11. Special Needs and Accommodations. OAH will provide a Pashto interpreter to assist Mother at the hearing. At present neither party anticipates the need for any other special accommodation for any witness or party, or for the services of an interpreter other than as stated above. A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk at (916) 263-0880, the OAH ADA Coordinator at OAHADA@dgs.ca.gov or 916-263-0880 as soon as the need is made known. Additional information concerning requests for reasonable accommodation is available on OAH's website at http://www.dgs.ca.gov/oah/Home/Accommodations.aspx.

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

13. 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 days or fewer than five days 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. IF A FULL AND FINAL SETTLEMENT 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, AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY.

Dates for hearing will not be vacated until OAH receives a letter of withdrawal, or those portions of the signed agreement withdrawing the case, with signatures. 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.

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

IT IS SO ORDERED.

Dated: May 11, 2015

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings