BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN CONSOLIDATED MATTERS INVOLVING:

PARENTS ON BEHALF OF STUDENT,

and

CLOVIS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023070475

OAH CASE NUMBER 2023070167

# ORDER FOLLOWING PREHEARING CONFERENCE FOR HEARING BY VIDEOCONFERENCE, ORDER GRANTING MOTION TO AMEND, ORDER TO UNCONSOLIDATE, AND DENYING MOTION TO QUASH

NOVEMBER 6, 2023

On November 6, 2023, Administrative Law Judge Marlo Nisperos, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Daniel Shaw and Julia Baker, Attorneys at Law, appeared on behalf of Student. Kathleen Anderson, Attorney at Law, appeared on behalf of Clovis Unified School District the PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

## HEARING DATES, TIMES, AND LOCATION

### DUE PROCESS HEARING

The hearing will take place on November 14, 15, and 16, 2023, and continue day to day at the discretion of the ALJ. The hearing may be held on Monday and Friday. The hearing shall begin at 9:30 AM each day and generally end at 3:30 PM, unless otherwise ordered. The parties anticipate it will take between seven and twelve days to complete the hearing. Additional hearing dates will be discussed with the ALJ during the hearing.

### HEARING LOCATION

OAH is authorized to conduct due process hearings by videoconference or telephone. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) OAH will conduct the due process hearing by videoconference using the Zoom application. Unless otherwise ordered, participants are required to appear by videoconference using computer or device with video capability and Zoom.

The parties shall immediately notify all potential witnesses of the hearing dates and shall subpoena witnesses, if necessary, to ensure that the witnesses will appear to testify. A party's failure to notify or subpoena a witness to testify will not be considered good cause to continue the hearing. Instructions for issuing and responding to subpoenas and optional forms for subpoenas can be found on the website at

https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena.

## ISSUES AND PROPOSED RESOLUTIONS

The ALJ has slightly altered the statement of some issues as allowed by the holdings in *J.W. v. Fresno Unified Sch. Dist*. (9th Cir. 2010) 626 F.3d 431, 442-443, and *Ford v. Long Beach Unified Sch. Dist*. (9th Cir. 2002) 291 F.3d 1086, 1090. (But see *M.C. v. Antelope Valley Union High Sch. Dist*. (9th Cir. 2017) 858 F.3d 1189, 1196, fn. 2 [dictum].) No change in substance has been made. A party believing that an issue has been misstated or improperly omitted shall promptly file a notice in writing stating its concern and referring to supporting portions of the complaint. No motion to amend the statement of issues will be considered unless it is made in time to be resolved before the hearing. This case was consolidated and initially included issues pled by Student and Clovis. In light of the ruling contained in the motions section herein, Clovis does not have any issues pending in the current matter.

In this Order a free appropriate public education is called a FAPE, and an individualized education program is called an IEP.

### ISSUES

1. Did Clovis deny Student a FAPE during the 2021-2022 school year, including extended school year by failing to:
    a. Assess Student for eligibility under the category autism;
    b. Conduct a legally complaint functional behavior assessment;
    c. Find Student eligible under the category autism;
    d. Offer services to meet Student's needs in the areas of:
        - behavior supports;

- structured social skills instruction;
- extended school year behavior services and supports, classroom placement, and social skills instruction

e. Implement Student's IEP, specifically:
   - behavior interventions; and
   - placement when Student was removed from the classroom for 95% of the day; and

f. Conduct an IEP team meeting to discuss:
   - a change in placement based on removing Student from classroom due to behaviors; and
   - to review Student's behavior intervention plan?

2. Did Clovis deny Student a FAPE during the 2022-2023 school year, including extended school year by failing to:
   a. Offer an assessment plan to conduct a functional behavior assessment;
   b. Offer services to meet Student's needs, specifically:
      - behavior supports;
      - a behavior intervention plan;
      - structured social skills instruction; and
      - extended school year behavior services and supports, classroom placement;
   c. Implement behavioral supports and services and behavior intervention plan;
   d. Convene an IEP team meeting to discuss:
      - Student's increased behavior;
      - updating Student's behavior intervention plan;

- adding behavioral services, and
- providing additional training to staff on how to support Student's behavioral needs;

e. Make a clear written offer in the IEP of April 11, 2023, based on:
   - failing to describe the amount and location of educationally related mental health services counseling; and
   - referencing Student's behavior intervention plan from the 2021 IEP that did not reference goals in the current IEP offer; and

f. Offer placement in the least restrictive environment

3. Did Clovis deny Student a FAPE during the 2023-2024 school year, through September 26, 2023, by failing to:
   a. Offer services to meet Student's needs, specifically:
      - behavior supports; and
      - specialized academic instruction; and
   b. Offer accommodations to meet Student's needs?

## PROPOSED RESOLUTIONS

The resolutions requested by Student include compensatory education and prospective relief in accordance with proof at hearing.

Clovis filed its response to Student's first amended complaint on October 5, 2023. (*M.C. v. Antelope Valley Union High School Dist.* (9th Cir. 2017) 858 F.3d 1189, 1199-1200.)

## EXHIBITS

The parties shall serve their exhibits on each other in compliance with Education Code section 56505, subdivision (e)(7). The parties shall upload their exhibits electronically according to the Order Setting Procedures for Filing Exhibits Electronically. Timely uploading electronic hearing exhibits five business days before the first day of hearing constitutes that party's timely exchange of evidence in compliance with Education Code section 56505, subdivision (e)(7). If further assistance is needed, please contact OAH at OAHSEOps@dgs.ca.gov.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not timely exchanged as required by Education Code section 56505, subdivision (e)(7) shall not be admitted into evidence at the hearing unless the ALJ rules that it is admissible.

## IDENTIFYING EXHIBITS AND PAGE NUMBERS

Each exhibit must be identified by a letter and number. Student must use the letter S before the number to identify Student's exhibits. Clovis must use the letter D before the number to identify Clovis's exhibits. For example, S-1 means Student's exhibit 1 and D-1 means Clovis's exhibit 1. A cover sheet with this identifying letter and number should be the first page of each exhibit. The electronic evidence program will automatically number the exhibits and additional page numbering or bates stamping should not be added.

## CONTENT

Each exhibit must consist of one document. Separate documents may not be combined into one exhibit. Emails or letters may be consolidated into one exhibit if they are part of a single chain of messages. Exhibits should be in chronological order.

Parties should include resumes or curriculum vitae for each witness expected to testify as an expert.

Clovis's exhibits must include a copy of the school calendar for each school year in question.

Electronic copies of exhibits filed with OAH shall be filed by 5:00 PM at least five business days before the first day of hearing. Please refer to the General Order OAH issued with the Scheduling Order that contains the Order Setting Procedures for Filing Exhibits Electronically. It includes instructions for how to file exhibits electronically. Beginning three business days before the hearing, the electronic evidence system will not allow parties to upload exhibits unless permitted by the ALJ during the hearing at the ALJ's discretion.

## WITNESSES

The parties shall serve their list of witnesses on each other in compliance with Education Code section 56505. No party shall be permitted to call any witnesses not timely disclosed except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

Parties are responsible for ensuring that all participants are familiar with and follow the Instructions for Joining the Online Due Process Hearing provided with this Order. Participants who have not previously used the Zoom application, may find

informative instructions on at by visiting, Getting Started with Zoom at https://support.zoom.us/hc/en-us/categories/200101697.

The parties are responsible for ensuring that witnesses join the virtual hearing room at the designated date and time to testify. Witnesses are required to join the due process hearing by computer and appear by videoconference unless they do not have the necessary computer equipment. If a witness does not have the necessary equipment, the ALJ may permit the witnesses to appear by audio only or by telephone. "Audio only" means using a computer without video. A witness's inability to attend the hearing by videoconference will be discussed at the start of the hearing.

The parties are responsible for producing their own witnesses unless otherwise ordered by the ALJ. Parties shall make witnesses under their control reasonably available. The parties must schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses out of order.

The ALJ has discretion to limit the number of witnesses and the time allowed for testimony. Education Code, section 56505.1, subdivision (h), empowers the ALJ to set a reasonable limit on the length of the hearing after consideration of four factors. The first two factors are the issues to be heard and the complexity of facts to be proven. The second two factors are the ability of the parties or their representatives to present their respective cases and the parties' estimates of the time needed to present their cases.

## MEET AND CONFER

The parties are encouraged to review and shorten their witness and exhibit lists before the hearing. Evidence may be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear.

The parties are ordered to meet and confer no later than November 9, 2023, at 5:00 PM to discuss scheduling witnesses and how much time each witness will take. The parties shall discuss any issues related to counsel and witnesses appearing by videoconference for hearing, electronically viewing exhibits during the hearing, and subpoenas, if any. The parties should attempt to eliminate duplicate exhibits from their hearing exhibits. The parties shall discuss whether they can produce a written stipulation as to pertinent facts, contentions, resolutions and the authenticity and admissibility of documents to shorten the length of time needed for the hearing.

As part of the meet and confer process, Clovis shall inform Student which proposed witnesses are District employees. Clovis shall also identify the witnesses on Student's list that require a subpoena. Clovis may agree to accept service for a witness under Clovis's control or provide Student with the witness's most recent contact information.

The parties agreed they would meet by November 7, 2023, at 5:00 PM and Clovis will provide the most recent contact information for witnesses on either party's witness list that require a subpoena.

## PARTICIPANT INFORMATION FORM

Both parties have an ongoing obligation to ensure that OAH has current information on the Participant Information Form filed with OAH and shall file an updated Form as necessary. The Participant Information Form is not served upon the opposing party. The ongoing obligation to ensure that the Participant Information Form filed with OAH is current does not change the parties' statutory obligation to timely disclose their witnesses to the other party(s) at least five business days prior to hearing. The parties must file an updated Participant Information Form to inform OAH of any

changes, additions, or deletions, including the required information no later than 5:00 PM at least two business days before the first day of hearing.

Any contact information provided shall be used for the limited purpose of issuing subpoenas or for contacting a witness to attend the hearing. Any contact information shall not be disclosed to any other person.

## EVIDENCE PRESENTATION

In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 62.) In this case Student requested the hearing and bears the burden of proof. Student's case-in-chief shall be presented first, followed by Clovis's, unless otherwise ordered.

## WITNESS LISTS

The parties must provide a joint proposed witness list to the ALJ on the first day of hearing. The list should include the first and last name of the witness, which party is calling the witness to testify, and include dates and time estimates of each witness's expected testimony. In the event an agreement cannot be reached, each party shall prepare a separate written list. Student must have witnesses available in case there is no agreement.

At the beginning of the hearing, the ALJ and the parties will discuss the length of time anticipated for each witness and scheduling issues for individual witnesses. The ALJ will finalize the witness schedule. Parties must be prepared at the end of each day to discuss the witnesses to be presented the next day and the estimated time for the testimony of each witness.

## SCOPE OF WITNESS EXAMINATION

Each witness will be called to testify only once, except for rebuttal purposes. All parties must examine a witness on all issues when the witness is first called to testify. Requiring a witness to appear only once takes priority over the order in which parties present their case-in-chief.

## AUDIO ONLY OR TELEPHONIC TESTIMONY

Whether a witness may appear by audio only or telephone instead of videoconference 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 audio only or telephone shall request permission to do so before the hearing. Any party seeking to present a witness who cannot access exhibits electronically must inform the ALJ at the beginning of the hearing.

## ELECTRONIC RECORDINGS

### AUDIO RECORDING

A party may request permission to make an audio recording of the hearing. Permission to make an audio recording is subject to the ALJ's discretion and based upon the following conditions:

1. the OAH recording is the only official recording;
2. the parties shall turn their recording device on and off at the same time that the ALJ is on and off the record to avoid recording conversations while off the record;

3. operation of the party's recording mechanism will not be allowed to delay the hearing;
4. a party's recording may not be given, provided or played to a witness, or potential witness;
5. the recording is subject to the same confidentiality as the due process hearing; and
6. participants shall not take screenshots of the videoconference nor share or publish any portion of the videoconference or audio recording.

Student's and District's requests to make an audio recording of the hearing are granted.

## VIDEO RECORDING

No party, witness or anyone else may videorecord any part of the proceedings or stream live through any means.

## RECORDINGS AS EXHIBITS

The parties have permission to upload recordings to the electronic evidence program. The ALJ has discretion to admit or exclude evidence in the form of a recording. Any request to submit a recording shall be considered at the time of hearing.

The ALJ may grant or deny the request or grant the request subject to certain conditions. The party offering the recording must establish that all or a part of the recording is relevant. The ALJ may request a transcript of the portion of the recording requested or have the party offering the recording to provide an exact identifiable portion of the recording the party seeks to admit. The identities of any person speaking on the portion of the tape being introduced must be established. An ALJ may allow the

opposing party to offer additional portions of a recording to establish the context, or to rebut, the recording.

## COMPENSATORY EDUCATION OR REIMBURSEMENT

Any party seeking reimbursement for expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of the expenditures. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education. Documents offered as evidence to support a request for reimbursement must be separated by vendor.

## MOTIONS

### CLOVIS'S MOTION TO AMEND

On July 5, 2023, Clovis filed a due process hearing request, referred to as a complaint, with the Office of Administrative Hearings, called OAH, in case number 2023070167, naming Student. On July 13, 2023, Student filed a complaint with OAH naming Clovis. On July 20, 2023, OAH granted Student's request to consolidate the matters. On September 26, 2023, OAH granted Student's request to amend the consolidated matter.

On November 2, 2023, Clovis filed a motion to amend and amended complaint. On November 3, 2023, Student filed an opposition to the motion to amend.

An amended complaint may be filed when the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or when the hearing officer grants permission. The hearing officer may grant permission at

any time more than five days before the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

Clovis's motion to amend was filed more than five days prior to the due process hearing. Therefore, it is timely and is granted.

## UNCONSOLIDATION

Clovis's amended complaint alleges one issue: whether Clovis's offer in the October 19, 2023 IEP constitutes FAPE in the least restrictive environment such that Clovis may implement this IEP without Parents' consent.

No statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases. However, OAH will generally consolidate matters that involve the same parties, a common question of law and/or fact, and when consolidation of the matters furthers the interests of judicial economy by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

On July 20, 2023, OAH granted Student's motion to consolidate. The motion to consolidate was granted because the consolidated matters involved a common question of law or fact, specifically, both cases involved the appropriateness of the placement, supports, and services offered in the IEP of November 2, 2022. Consolidation was granted because the interests of justice would be served by avoiding potentially conflicting rulings and orders.

Based on Clovis's amended complaint involving only the IEP of October 19, 2023, the basis for consolidating the two matters no longer exists. The time period at issue in Student's complaint ends on September 26, 2023, the date Student's complaint was amended. Student's and Clovis's matters each involve separate and distinct time periods and different IEP offers. Adjudicating Student's and Clovis's matters in one hearing would not further the interests of judicial economy because separate hearings will not result in conflicting rulings or orders because each matter involves different periods of time and different IEPs. Additionally, had the motion to amend been granted and consolidation remained, Student would have been prejudiced as the respondent in a hearing starting just one week after amendment was granted. As a result of granting Clovis's request to amend its complaint, the matters are unconsolidated.

OAH will issue a new scheduling order in Clovis's matter, OAH case number 2023070167. Clovis's amended complaint shall be deemed filed on the date of this order. All applicable timelines in Clovis's matter shall be reset as of the date of this order.

Student's matter, OAH case number 2023070475, shall proceed to hearing on November 14, 15, and 16, 2023, as currently scheduled.

## MOTION TO QUASH

On October 27, 2023, Clovis filed a motion to quash petitioner's amended subpoena duces tecum. On November 1, 2023, Student filed an opposition to Clovis's motion to quash. On November 3, 2023, Clovis filed a response to Student's opposition. At the PHC, Student withdrew his request for text messages as stated in the subpoena duces tecum.

Clovis contends that Student failed to demonstrate reasonable necessity for the documents requested. Clovis argues that Student's conclusory statements in the subpoena duces tecum does not demonstrate reasonable necessity. Clovis also asserts that Student's request is overly broad and unduly burdensome. Clovis points out that Student's request goes back to February 2021, but the time period at issue for hearing begins July 13, 2021. Additionally, Clovis complains that it is unclear what Student hopes to learn by reviewing employee communications that Student doesn't already know based on receiving the Student records.

At the PHC, Clovis argued that many employees worked with Student and there are approximately 6,000 emails that are potentially responsive to the subpoena duces tecum. Clovis asserted that Student has a sibling and some emails may be regarding them. Clovis argued that it would take an enormous amount of time to sift through the emails do determine which are responsive. Clovis contends the unduly burdensome effect of Student's request is underscored by Student's failure to provide a nexus between the documents requested and how, specifically, those documents are objectively required to present his case.

Student asserts that the declaration in support of the subpoena duces tecum demonstrated reasonable necessity as it requested communications that were relevant and reasonably necessary to present evidence on the issues in his complaint. Student specifically listed the categories of documents he is seeking. Student's subpoena duces tecum also stated that the materials being sought are not considered student records and were not previously provided to Student in his student records request and can only be elicited via subpoena. Student's opposition states that the communications he is seeking prior to his enrollment for the 2021-2022 school year involve Clovis and Student's school of attendance. During this time period Student explains that Clovis

was conducting its initial assessment. Student asserts those communications might be relevant to Student's case, particularly, what information Clovis had at the time they made their first offer of FAPE.

In general, there is no right to prehearing discovery in due process proceedings under the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.). Rather, the IDEA provides parties with the right to present evidence and compel the attendance of witnesses at "a hearing conducted under subsection (f) or (k)" of section 1415 of title 20 of the United States Code. (20 U.S.C. § 1415(h).) California provides a similar right to present evidence and compel the attendance of witnesses in due process proceedings but does not confer the right to prehearing discovery. (Ed. Code, § 56505, subd. (e).)

In special education proceedings in California, "[t]he hearing officer shall have the right to issue Subpoenas (order to appear and give testimony) and Subpoenas Duces Tecum (order to produce document(s) or paper(s) upon a showing of reasonable necessity by a party)." (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).) The law accords prehearing access to two types of documents: (i) parents have the right to request and receive the pupil's educational records within five business days at any time (Ed. Code, § 56504), and (ii) the parties are entitled to receive copies of all the documents the educational agency intends to use at hearing, not less than five business days prior to the hearing. (Ed. Code, § 56505, subd. (e)(7).)

Special education law does not specifically address motions to quash subpoenas or subpoenas duces tecum. In ruling on such motions, OAH relies by analogy on the relevant portions of Code of Civil Procedure section 1987.1, which provides that a court may make an order quashing a subpoena entirely, modifying it, or directing compliance with it upon such terms or conditions as the court shall declare, including protective orders.

Clovis's Motion to quash Student's subpoena duces tecum is denied. Student demonstrated reasonable necessity for the documents because emails, letters, and correspondence are not school records and Student has no means to request these documents besides by a subpoena duces tecum. The request for documents in Student's subpoena duces tecum is narrowly tailored and the categories of documents are clearly described. The types of documents Student requested directly correlates to the issues raised in Student's amended complaint.

Student's opposition further explained and narrowed the request for communications between February 2021 and July 13, 2021, by stating that he was seeking communications between Clovis and Student's school of attendance at the time. Student explained that the documents might be relevant to Student's case, particularly, what information Clovis had at the time they made their first offer of FAPE. As a result, based on Student's description of the communications from February 2021, through July 13, 2021, Clovis shall produce the documents as described herein, pursuant to Student's subpoena duces tecum as modified by Student's limitation.

No other prehearing motions are pending or contemplated. Any motion that was not filed three business days before the PHC, shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not timely filed.

## STIPULATIONS

Stipulations to pertinent facts, contentions, resolutions and authenticity and admissibility of documents are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in writing prior to the start of the hearing.

## CONDUCT OF PARTICIPANTS AND HEARING ROOM DECORUM

All participants to the videoconference should observe the same decorum as in an in-person due process hearing. Participants must conduct themselves in a professional and courteous manner at all times. Cellular phones, telephones and computer notifications must be shut off or set to silent during the hearing unless the ALJ grants permission otherwise. Participants should appear from a private location, unless otherwise ordered. Participants should take reasonable efforts to minimize background noise and maintain adequate room lighting. Use of virtual background images are at the discretion of the ALJ. Witnesses are prohibited from reading exhibits, documents, notes, text messages, telephones or computers while testifying, unless permitted to do so by the ALJ. The parties, their representative and witnesses are prohibited from passing notes to, exchanging electronic messages with, or signaling the witness in any way while the witness is testifying.

## LANGUAGE INTERPRETERS AND REASONABLE ACCOMMODATIONS

Neither party requested an accommodation or language interpreter.

A party or participant in this case, such as a witness, requiring reasonable accommodation to participate in a mediation or hearing may contact OAH at (916) 263-0880, or send an email to OAHADA@dgs.ca.gov as soon as the need is known. The e-mail should have "Request for Accommodation" in the Subject Line. Additional information concerning requests for reasonable accommodation is available on OAH's website at: https://www.dgs.ca.gov/OAH/Services/Page-Content/Office-of-Administrative-Hearings-Services-List-Folder/Request-Reasonable-Accommodations-for-OAH-Legal-Proceedings.

## HEARING CLOSED TO THE PUBLIC

The hearing is closed to the public. Special education hearings are closed to the public unless Student requests the hearing to be open to the public.

## 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 if 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. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH by visiting OAH Secure e-file at https://www.applications.dgs.ca.gov/oah/oahsftweb.

If a full and final written settlement agreement is reached after 4:00 PM 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.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed 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 before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

## FAILURE TO COMPLY

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

## ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the prehearing conference. Any discussion and conversation not referenced in this Order is not binding on the ALJ conducting the hearing and may not be relied upon by the parties. The parties should be aware that, at hearing, the ALJ conducting the hearing has discretion to reconsider any part of this Order.

## IT IS SO ORDERED.

*Marlo Nisperos*

Marlo Nisperos
Administrative Law Judge
Office of Administrative Hearings