BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: STUDENT, v. FORTUNA UNION HIGH SCHOOL DISTRICT AND KELSEYVILLE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2014080602 ORDER FOLLOWING PREHEARING CONFERENCE

On January 12, 2015, a telephonic prehearing conference was held before Administrative Law Judge Margaret Broussard, Office of Administrative Hearings. Timothy Poe, Attorney at Law, appeared on behalf of Student and was accompanied by James Stoepler, Attorney at Law and Lynne Page, Attorney at Law. Carl Corbin, Attorney at Law, appeared on behalf of both Fortuna Union High School District and Kelseyville Unified School District. The PHC was recorded.

Based on discussion with the parties, the ALJ issues the following orders:

1. Hearing Dates, Times, and Location. The hearing shall take place in Fortuna, California**. Mr. Corbin will notify both OAH and Student by January 12, 2015, at 5:00 p.m. of the address of the location of the hearing room.** The hearing shall take place on January 20, 21, 22 and February 3, 2015, and continue day-to-day thereafter, Monday through Thursday, at the discretion of the ALJ. On January 20, 2015, the hearing shall begin at 11:00 a.m. and end at 5:00 p.m., and begin at 9:00 a.m. on all remaining days, unless otherwise ordered.

The parties shall immediately provide hearing dates to proposed witnesses, and shall subpoena witnesses if necessary, to ensure their availability. Failing to properly notify or subpoena a witness does not constitute good cause for their unavailability. .

2. Issues and Proposed Resolutions. The issues below were discussed at the PHC and reworded for clarity:

Issue One: Did Fortuna deny Student a free appropriate public education from August 11, 2012 until May 2014 by failing in its child find obligation to Student?

Issue Two: Did Kelseyville deny Student a FAPE from August 11, 2012 through March 2014 by:

a. failing to develop an appropriate transition plan;

b. failing to complete a functional behavior assessment;

c. failing to implement a behavior support plan; and

d. implementing a shortened school day?

Issue Three: Did Fortuna deny Student a FAPE from March 2014 until the present by:

a. failing to develop an appropriate transition plan;

b. failing to complete a functional behavior assessment;

c. failing to implement a behavior support plan; and

d. making an offer of placement located more than 150 miles from Student's home and requiring Student to move to Fortuna to access the placement offer?

Proposed Resolutions

Fortuna will fund a "community based functional education program" through the school semester of Student's 22nd birthday (December 2015).

As compensatory education, Fortuna or Kelseyville (or both), will fund a "community based functional education program," for a period of two years from January 2016 through December 2017.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall number exhibits in a way that clearly identifies the party offering the exhibit (for example "S-1" for Student or "D-1" for District). Each exhibit shall be internally paginated, by exhibit, or all pages of a party's exhibit binder shall be Bates-stamped or otherwise consecutively numbered. Each exhibit will consist of one document or short series of documents that are related (such as emails). Each exhibit binder shall contain a detailed table of contents. Each party shall serve an exhibit binder containing its respective exhibits on the other party 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 a written declaration under penalty of perjury, and the ALJ rules that it is admissible.

4. Witnesses.

a) Each party is responsible for procuring their own witnesses; however, the parties shall make witnesses under its control reasonably available to the other party. Witnesses shall be scheduled in a way that avoids delays and minimizes or eliminates having to call a witness twice or out of order. Only witnesses disclosed in a party's prehearing conference statement, or disclosed at least five business days before the hearing, may testify, except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

b) At the beginning of the hearing, each party shall serve on the other party and on OAH a tentative witness list containing the estimated length of the witness' testimony and, identifying the witnesses the party intends to call, as opposed to witnesses the party may call depending on the flow of the hearing and the evidence. Prior to commencing the hearing, the ALJ and the parties will discuss the proposed witness schedule and address scheduling issues for individual witnesses, before the schedule is finalized. The ALJ has discretion to limit the number of witnesses and the length of their testimony.

5. Scope of Witness Examination. After the first direct and cross-examinations, each party shall only question a witness on matters raised in the immediately preceding examination. Parties shall be required to establish their cases in chief (conducting both direct and cross) so that each witness only appears once.

6. Telephonic Testimony. No party moved for telephonic testimony. A party must request in advance if it intends to present a witness via telephone. If the request is granted, the proposing party shall provide the proposed witness with a complete set of exhibit binders from all parties 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. At present, Student intends to make an audio recording of the hearing. Any party wishing to record the hearing must notify the ALJ at the hearing and the following conditions shall apply to any recording: 1) that OAH's recording is the only official recording; 2) that the recorder will be turned on and off at the same time as the ALJ's

recording, to avoid recording conversations while off the record; and 3) the 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. Fortuna and Kelseyville may bring a motion to continue the hearing date of February 3, 2015. At this time, no other 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. Compensatory Education and Reimbursement. Any party seeking expense reimbursements shall present admissible evidence of the expense, or a stipulation to the amount, as part of its case in chief. Any party seeking compensatory education shall provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

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

11. Conduct 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.

12. Special Needs and Accommodations. At present neither party anticipates the need for any special accommodation for any witness or party with the exception of making sure all parties and their representatives are in a position to hear the proceedings. 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 a requests for reasonable accommodation is available on OAH's website at http://www.dgs.ca.gov/oah/Home/Accommodations.aspx

13. Hearing Closed To the Public. The hearing will be closed to the public.

14. 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 BUSINESS 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.

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

IT IS SO ORDERED.

DATE: January 12, 2015

/s/
MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings