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 EXPEDITED PREHEARING CONFERENCE AND DISMISSING FRESNO COUNTY OFFFICE OF EDUCATION
PARLIER UNIFIED SCHOOL DISTRICT AND FRESNO COUNTY OFFICE OF EDUCATION.	

On August 22, 2016, a telephonic prehearing conference was held before Administrative Law Judge Cheryl Carlson, Office of Administrative Hearings. Alfonso Padron, Parent Advocate, appeared on behalf of Student[1]. Also present was Mother, Soimara Mendoza and Parent Advocate, Juan Sandoval. Karen E. Gilyard , Attorney at Law, appeared on behalf of Parlier Unified School District. Jennifer R. Rowe Gonzalez, appeared on behalf of Fresno County Office of Education. The PHC was recorded.

PRELIMINARY MATTER
DISMISSAL OF FRESNO COUNTY OFFICE OF EDUCATION

Student initially named both the Parlier Unified School District and the Fresno County Office of Education in its Request for Mediation and Due Process Hearing. Student did not thereafter serve the Fresno COE with the Due Process Request. During the prehearing conference, Mother through Ms. Padron, confirmed that the Fresno COE was named by mistake and should be dismissed. This motion is granted and Fresno COE is dismissed from this matter.

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

1. Hearing Dates, Times, and Location. The expedited hearing shall take place on August 30, 31, and September 1, 2016, and continuing day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at the District's offices

[1] Alfonso Padron is serving as Student's advocate but all orders and notices will continue to be served on Parent.

located at Parlier Unified School District, 900 Newmark Avenue, Parlier, CA 93648.[2] 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.

As ordered in the scheduling order, the named local educational agency was 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. The named local educational agency failed to certify that it would provide a facility for this case that complied with the law. The local educational agency shall inform OAH within two days of the date of this order it is able to certify 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, including (1) a table for Student and his representatives; (2) a table for District'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 the 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. Parlier 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 expedited issues at the due process hearing, and the proposed resolutions, are listed below.

Expedited Issues:

1. Whether Parlier changed Student's placement during the 2015-2016 school year and failed to provide notice of a change in placement after 10 days of suspension;

2. Whether Parlier failed to convene an IEP meeting within 10 days after the 10th day of suspension to assess if Student's conduct was a manifestation of his disability;

[2] Parlier to notify OAH and Parent within two business days of this Order the alternate location for the hearing that complies with OAH requirements for hearing room configurations.

3. Whether Parlier failed to determine if Student's behavior was a manifestation of his disability at an IEP meeting in May 2016, and failed to conduct a functional behavior analysis;

4. Whether Parlier failed to continue to provide educational services after 10 days of suspension;

5. Whether Parlier failed to use disciplinary interventions as described in 20 U.S.C. § 1415(k)(1)(D)(i), and whether Parlier used prohibited emergency interventions.

Student's proposed resolution: Student seeks an order that Parlier did not meet Student's needs, did not provide a FAPE for Student. Student also seeks an order for individual services and compensatory education.

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 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. 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 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 timely exchanged shall not be admitted into evidence at the hearing unless the ALJ rules that it is admissible.

4. Witnesses. 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. Witnesses shall be scheduled in a way that avoids delays and minimizes or eliminates having to call a witness twice or out of order. Neither party shall be permitted to call any witnesses not timely disclosed except for good cause shown, and at the discretion of the ALJ.

The parties are ordered to meet and confer to develop a proposed joint witness schedule. The proposed scheduled will be presented to the ALJ at the beginning of the hearing. Prior to the commencement of the due process 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 will be permitted to question the witness on matters raised in the immediately preceding examination. Parties are required to establish their cases in chief (conducting both direct and cross) so that each witness only appears once.

6. Telephonic Testimony. A party must ask in advance it intends to present a witness by telephone; if granted, the 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. At this point there is no pending request for telephonic testimony.

7. Electronic Recording of Hearing.

a. Audio Recording. Neither party made a motion to make an audio recording of the hearing. If either party subsequently requests to make such a recording, the party shall move for leave to do so in advance of the hearing. If granted, the recording is 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. 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 of August 22, 2016.

10. Compensatory Education/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. Student did not request an interpreter for the hearing at the time of the prehearing conference; however, in his prehearing conference statement Student requested an interpreter "from English to Spanish". If Student is formally requesting an interpreter for a portion of the hearing, Student is ordered to file a request for an interpreter and supporting declaration by **Thursday, August 25, 2016 at 12:00** p.m. The declaration must include the scope of an interpreter's services at the hearing including whether the interpreter is needed for a particular witness or a party and whether the interpreter is needed for the entire hearing or a portion of the hearing.

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/Accessibility.aspx.

14. Hearing Open/Closed 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: August 22, 2016

DocuSigned by:
Cheryl Carlson
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CHERYL CARLSON
Administrative Law Judge
Office of Administrative Hearings