BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. FRESNO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015070319 ORDER FOLLOWING PREHEARING CONFERENCE AND DENYING MOTIONS TO CONTINUE AND TO CONDUCT HEARING OUTSIDE OF STANDARD BUSINESS HOURS

On September 14, 2015, a telephonic prehearing conference was held before Administrative Law Judge Lisa Lunsford, Office of Administrative Hearings.[1] Mother appeared on behalf of Student. Diandra Netto, Attorney at Law, appeared on behalf of Fresno Unified School District. Sydney Smith, Attorney at Law, was also present on behalf of Fresno. 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 on September 22, 23, 24, 29 and 30, 2015, and continue day-to-day thereafter, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at the **Fresno Unified School District's Professional Development Center located at 1833 E Street, Fresno, California, 93706**. On September 22, 2015, the hearing shall begin at 9:30 a.m., and the hearing shall begin at 9:00 a.m. on all remaining days, unless otherwise ordered. Fresno shall ensure that the facility for the hearing 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.

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. Failing to properly notify or subpoena a witness does not constitute good cause for their unavailability.

[1] Presiding Administrative Law Judge Margaret Broussard observed.

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

Issue One: Did Fresno deny Student a free appropriate public education by failing to provide Student with appropriate specialized academic instruction services from June 30, 2013 through June 30, 2015 by:

a. failing to provide Student with an additional hour daily of one-to-one direct instruction and specialized academic services; and

b. failing to provide Student with intervention and services at his instructional reading level?

Issue Two: Did Fresno fail to provide Student with appropriate speech and language services by:

a. failing to provide any speech and language services between June 30, 2013 and December 31, 2013; and

b. failing to increase Student's services during the time period of June 30, 2013 through June 30, 2015?

Issue Three: Did Fresno commit the following procedural violations which resulted in denying Student a FAPE:

a. failing to provide accurate levels of academic achievement and functional performance at the individualized education program team meetings held between June 30, 2013 and June 30, 2015[2]; and

b. failing to develop appropriate measurable goals at the IEP team meetings held between June 30, 2013 and June 30, 2015; and

c. offering Student a special day class in June 2015 without providing a course description of the new class; and

d. failing to provide parents with required progress reports from June 30, 2013 through June 30, 2015, regarding Student's progress meeting his annual IEP goals; and

e. failing to provide prior written notice to parents during the 2014-2015 school year, when Fresno refused to timely hold an IEP team meeting; and

[2] The parties were unclear as to the exact dates of the IEP team meetings held between June 30, 2013 and June 30, 2015. Parent will clarify these dates on the first day of hearing, and the exact dates will be added to issues 3a and 3b.

f. failing to hold an IEP team meeting from January 2015 to May 2015 at the parents' request; and

g. failing to have all legally required people at the IEP team meeting on May 1, 2015?

Issue Four: From June 30, 2013 through June 30, 2015, did Fresno deny Student a FAPE by:

a. removing Student's Learning Strategies class and offering placement as an aide in a functional skills class; and

b. failing to offer or provide any Extended School Year services?

Issue Five: Did Fresno fail to implement Student's IEP goals and services from June 30, 2013 through June 30, 2015?

Student's Proposed Resolutions:

a. Compensatory education in all areas of need;

b. Immediate convening of an IEP meeting by Fresno;

c. Fresno to provide professional development; and

d. Reimbursement for parents' out of pocket expenses associated with this due process hearing.

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.

Each party is expected to comply with Education Code section 56505, subdivision (e)(7) and timely serve an exhibit binder containing its respective exhibits on the other party. 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. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses 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 encouraged to review and shorten their witness lists prior to the hearing, bearing in mind that evidence will 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 to develop a proposed joint witness schedule. The proposed schedule will be presented to the ALJ at the beginning of the hearing. 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 who testify and the length of their testimony, to ensure that this matter is concluded within the time allotted, based upon the parties' time estimates and the issue presented.

The parties shall provide resumes for each witness who testifies in their professional capacity. Those resumes shall be included in the parties' evidence binder as separate exhibits.

5. Order of Presentation of Evidence and Scope of Witness Examination. Student bears the burden of proof in this case. Student shall present his evidence first, followed by Fresno. Where Student and Fresno intend to call the same person to testify, each party will examine the witness immediately after the other party, so the witness will only need to be called to the witness stand once. 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.

6. Telephonic Testimony. Whether a witness may appear by telephone 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 telephone shall move in advance for leave to do so, unless the opposing party has stipulated that the witness may appear by telephone. The proponent of the witness 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. No witness will be heard by telephone unless all these requirements have been fulfilled. Student indicated that one or more witnesses may need to appear telephonically and will make a motion if such a need arises. Fresno indicated that at this time no witnesses are expected to testify telephonically.

7. Electronic Recording of Hearing.

a. Audio Recording. At present, Student and possibly Fresno intend to make audio recordings of the hearing. Any party wishing to record the hearing must notify the ALJ at the hearing, and the following conditions 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; 3) the operation of the party's recording mechanism will not be allowed to delay or disrupt the hearing; and 4) that the recording will not be shared with any individuals outside of the hearing room during the hearing. Failure to comply with these conditions may result in a revocation of this order which grants the parties permission to make an audio recording of 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.

Student made a motion to conduct the hearing outside of standard hours. Specifically, Student requested, based on the hardship of missing work, that the hearing begin at 8:30 a.m. or proceed from 4:00 p.m. through 9:00 p.m. Fresno objected based on the difficulty of producing witnesses during those hours. The motion was denied.

Fresno made a motion to continue the hearing based on the broad nature of the issues and the need for additional time to prepare, and Student objected based on the hardship a delay would cause him. Good cause not appearing, the motion for a continuance was denied.

At this time, no other 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.

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. Compensatory Education and 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. Any party seeking compensatory education shall provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

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 or interpreter for any witness or party. 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 or 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 request 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. At the request of Student, 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 within five or fewer days before 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 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 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.

DATE: September 15, 2015

/s/

LISA LUNSFORD
Administrative Law Judge
Office of Administrative Hearings