BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. EAST SIDE UNION HIGH SCHOOL DISTRICT AND SANTA CLARA COUNTY OFFICE OF EDUCATION.	OAH Case No. 2016061098 ORDER FOLLOWING PREHEARING CONFERENCE AND DISMISSING EXPEDITED ISSUES

On July 11, 2016, a telephonic prehearing conference was held before Administrative Law Judge Dena Coggins, Office of Administrative Hearings. Richard Ruderman, Attorney at Law, appeared on behalf of Student. Julia Souza, Attorney at Law, also appeared on behalf of Student. Eliza McArthur, Attorney at Law, appeared on behalf of East Side Union High School District. Courtney Brady, Attorney at Law, appeared on behalf of Santa Clara County Office of Education. The PHC was recorded.

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

1. Stipulation to Unexpedite the Expedited Matters. On June 29, 2016, East Side filed a motion to unexpedite the matter. Student filed an opposition to the motion on July 5, 2016. OAH issued an order on July 6, 2016, denying the motion and confirming the expedited hearing dates. On July 8, 2016, the parties filed a written stipulation to unexpedite the expedited portions of the complaint, and sought to join the expedited issues with the unexpedited issues raised in the complaint. The parties were heard on the stipulation during the PHC. The parties requested the stipulation be considered a motion for reconsideration of the July 6, 2016 order.

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

The issue of whether to unexpedite the expedited issues has already been resolved in the July 6, 2016 order. The parties cannot stipulate around the OAH order. The motion to reconsider the July 6, 2016 order is denied for lack of new or different facts.

2. Motion to Withdraw Expedited Issues Without Prejudice. During the PHC, the parties stipulated that Student may withdraw the expedited issues without prejudice and raise the issues as part of the underlying case that alleges a denial of a free appropriate public education to Student. Student withdrew the expedited issues on the record without prejudice during the PH. The matter will proceed on the currently set dates on the non-expedited issues. The formerly expedited issues may be raised to support Student's FAPE claims only. If Student would like to proceed on the expedited issues outside of a FAPE claim, Student has withdrawn those issues without prejudice, and may pursue the expedited issues by filing a due process complaint as to the expedited issues. Allowing Student to proceed on the expedited issues in the current matter outside of a FAPE claim would be inconsistent with the July 6, 2016 order.

3. Hearing Location. In the June 27, 2016 scheduling order, the expedited and non-expedited hearings were to take place at Franklin-McKinley School District's offices. Franklin-McKinley was dismissed as a party to this matter pursuant to an order of dismissal, dated July 8, 2016. East Side and/or Santa Clara shall file a notice of hearing location within two business day of this order.

In addition, 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 local educational agency hosting the hearing 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.

4. 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: July 13, 2016

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DENA COGGINS
Administrative Law Judge
Office of Administrative Hearings