BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. FOLSOM CORDOVA UNIFIED SCHOOL DISTRICT,	OAH Case No. 2015010431
FOLSOM CORDOVA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2014121009 ORDER FOLLOWING PREHEARING CONFERENCE

On May 22, 2015, a telephonic prehearing conference was held before Administrative Law Judge Joy Redmon, Office of Administrative Hearings. Mother and Father appeared on Student's behalf. Attorney Rebecca Feil appeared on Folsom Cordova Unified School District's behalf and attorney Anne Sherlock listened to the hearing. The PHC was recorded.

Based upon discussion with the parties the following orders are issued:

Motion to Dismiss Issues: On May 11, 2015, Folsom Cordova filed a partial motion to dismiss two issues raised in Student's complaint. Student filed a written response to the motion but did not generally oppose Folsom Cordova's requests. The parties were given an opportunity to further clarify their positions during the PHC. Student's Issue 1 (as identified below) is limited to the time period falling within the applicable statute of limitations period, from January 9, 2013, through the end of the 2012-2013 school year. Additionally, Folsom Cordova's motion was granted as to Student's issue 4 regarding allegations arising under Section 504 of the Rehabilitation Act of 1973 as OAH lacks jurisdiction over Section 504 claims.

Motion to Compel Documents: On May 22, 2015, Student filed a motion to compel progress reports that were to be generated in February 2015. Folsom Cordova's attorney asserted that no such documents exist to her knowledge. This ALJ denied the motion at this time but asked Folsom Cordova's counsel to inquire with her client and note for the record on the first day of hearing whether or not the requested documents exist.

1. Hearing Dates, Times, and Location. The hearing shall take place **Folsom Cordova Unified School District's offices located at 1965 Birkmont Drive, Rancho Cordova, California 95742.** It is scheduled for May 28, 2015, from 9:30 a.m.-5:00 p.m. The hearing will reconvene Monday, June 8, 2015, Tuesday, June 9, 2015, and Wednesday, June 10, 2015, from 9:00 a.m. – 5:00 p.m.. The hearing will continue day-to-day Monday through Thursday as needed and at the discretion of the ALJ. Folsom Cordova 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 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. Issue and Proposed Resolutions. The issues below were discussed at the PHC and reworded for clarity.

Student's Issues:

Issue 1: Did Folsom Cordova procedurally and substantive deny Student a FAPE during the 2012-2013 school year from January 9, 2012, forward by:

a. failing to assess Student in all areas of suspected disability, specifically in executive functioning;

b. denying parents meaningful participation in IEP team meetings held on January 18, 2013, March 1, 2013, April 5, 2013, and May 21, 2013

c. predetermining Student's individualized education program dated May 21, 2013;

d. failing to provide Student with a measurable reading comprehension goal

e. failing to provide goals in all areas of need, specifically in math, executive functioning, attention, and anxiety;

f. failing to implement Student's IEP accommodations and modifications;

g. failing to provide Student with some speech and language sessions contained in his IEP; and

h. failing to provide Student with a psychoeducational and academic independent evaluation as agreed to by Folsom Cordova?

Issue 2: Did Folsom Cordova procedurally and substantively deny Student a FAPE during the 2013-2014 school year by:

a. failing to have an IEP in place at the beginning of the school year

b. falling to implement Student's IEP by not providing:

i. Student with specialized academic instruction in Student's English and math classes; and

ii. accommodations in all classes.

c. failing to change Student's math placement;

d. failing to provide prior written notice to parents when they requested Student receive additional math support, an independent study period, or specially designed academic instruction in English;

e. failing to have a general education teacher help decide Austin's accommodations, the appropriate positive behavioral interventions and supports, or other strategies for Student specifically supplementary aides and services, program modifications, and supports for school personnel during the October 18, 2013, January 10, 2014, and February 28, 2014, IEP team meetings;

f. failing to provide student with transition goals and services; and

g. unilaterally determining and developing Student's IEP dated January 10, 2014?

Issue 3: Did Folsom Cordova procedurally and substantively deny Student a FAPE during the 2014-2015 school year by:

a. failing to implement Student's IEP, specifically regarding specialized academic instruction in English and accommodations and modifications in Student's science and history classes;

b. failing to provide Student with transition goals and post-secondary transition services;

c. failing to have an annual IEP team meeting; and

d. failing to provide IEP progress reports?

Proposed Resolution: Student seeks compensatory education by non-public agency providers in academics specifically language arts and math, social emotional/psychological, and speech and language; reimbursement for assessments conducted by Lisa Sporri, Dr. McCartney, a formal transition assessment, and an IEP with transition goals; other relief deemed appropriate by the ALJ.

Folsom Cordova's Issue:

Is Folsom Cordova entitled to assess Student in accordance with its April 10, 2014, assessment plan without parental consent?

Proposed Resolutions: Folsom Cordova seeks an order granting it permission to assess Student over parental objection. It also seeks an order that if Student is not make available for assessment, that Folsom Cordova be allowed to terminate providing Student a free appropriate public education to Student.

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). All pages of a party's exhibit binder shall be consecutively numbered**.** The exhibits should consist of one document or short series of documents that are related (for example, an individualized education program shall have its own exhibit rather than a single exhibit for all IEP's). Each exhibit binder shall contain a detailed table of contents. At the hearing, each party shall supply an exhibit binder containing its exhibits for the ALJ, and a second exhibit binder for the 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 included in the exhibit lists and not previously exchanged will 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 their 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.

b) **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 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 shall be required to establish their cases in chief (conducting both direct and cross) so that each witness only appears once. This is a consolidated case and Student will present his case first followed by Folsom Cordova.

6. Telephonic Testimony. A party must ask in advance if it intends to present a witness via 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. No specific request for telephonic testimony was made during the PHC.

7. Electronic Recording of Hearing.

a. Audio Recording. At present, Folsom Cordova asked to record the hearing. The request was granted with the following conditions: 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) that the operation of the party's recording mechanism will not be allowed to delay the hearing; and 4) that the recording will not be shared with any individuals outside of the hearing room during 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. No motions are pending or anticipated prior to hearing. Any motion filed after the prehearing conference must be accompanied by a showing of good cause as to why the motion was not made prior to 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 expense reimbursement shall present admissible evidence of these expenditures, 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.

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. 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 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 Student's request 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: May 22, 2015

/S/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings