BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018051153
v.	ORDER FOLLOWING PREHEARING CONFERENCE
GILROY UNIFIED SCHOOL DISTRICT.	

On July 9, 2018, a telephonic prehearing conference was held before Administrative Law Judge Cynthia C. Fritz, Office of Administrative Hearings. Chuoyuan Zhang, parent, appeared on behalf of Student. Trisha Green, Student Services Coordinator, appeared on behalf of Gilroy Unified School District. The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on **July 17, 2018, at 9:30 a.m.** The hearing shall take place at Gilroy Unified School District, 7810 Arroyo Circle, Gilroy, California 95020.

As ordered in the scheduling order, Gilroy shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 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. Gilroy has not yet filed the required certification but represents it shall do so. Gilroy shall certify that the facilities to be used for this case comply with the law, and shall file a certificate to that effect by **July 12, 2018.** Gilroy shall also file a response to the due process complaint by **July 12, 2018.**

Prior to the beginning of the hearing, Gilroy shall ensure that the hearing room is configured into a courtroom setting and shall have at a minimum (1) a table for Student and his representatives; (2) a table for Gilroy's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. Gilroy shall provide drinking water and tissue to all parties, witnesses and the ALJ. The same hearing room shall be used for each day of 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. Gilroy 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 issues at the due process hearing, and the proposed resolutions, are listed below.

Issues

1. Whether Gilroy denied Student a FAPE during the 2017-2018 school year by:

a. failing to reimburse the cost of round trip airfare for both parents to attend the Student parent conference, based upon the June 23, 2017, IEP travel agreement between the parties.

b. failing to reimburse the parents the cost of rental car tolls to attend the Student parent conference, based upon the June 23, 2017, IEP travel agreement between the parties.

Proposed Resolutions:

1. Reimburse both parents the cost of the airline tickets for attending the Student parent conference.

2. Reimburse the rental car tolls for attending the Student parent conference.

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 Gilroy exhibit (for example, "S-5, S-6, or D-1, D-2"). All of a party's exhibits shall be numbered running consecutively through the binder. 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 included in the exhibit lists and not previously exchanged shall not be admitted into evidence at the hearing unless it is supported by written declaration under penalty of perjury, and 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 disclosed in the party's prehearing conference statement except for good cause shown, supported by written declaration under penalty of perjury, 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.

Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for direct and cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule.

5. Scope of Witness Examination. Each witness shall be called to testify only once, except for rebuttal purposes, and all parties shall examine the witness on all issues when the witness is first called.

6. 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 has the burden of proof and shall present its case-in-chief, followed by Gilroy.

7. 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. Neither party requested telephonic testimony at the time of the prehearing conference.

8. Electronic Recording of Hearing.

a. Audio Recording. Both parties' motions to make an audio recording of the hearing is granted subject to the following conditions: 1) 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; 3) the recording device will be removed by the party recording during any recess where the party leaves the room; 4) that operation of the party's recording mechanism will not be allowed to

delay the hearing; and 5) a private recording is not allowed to be used to prepare the testimony of an upcoming witness in 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.

9. IEP Recordings. Neither party requested to introduce an IEP recording or portions of an IEP recording at the preconference hearing.

10. Motions. At present no prehearing motions are pending or contemplated. Any motion that was not filed three business days prior to the prehearing conference, shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not timely filed.

11. 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.

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

13. 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.

14. Special Needs and Accommodations. At present, Parents request a Mandarin interpreter for 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 https://www.dgs.ca.gov/oah/Home/Accessibility.aspx.

If it is determined at the time of hearing that a party needs accommodations , please contact the administrative law judge.

15. Hearing Open To the Public. At the request of Student, the hearing will be open to the public.

16. 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 **EMAIL THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT** https://www.dgsapps.dgs.ca.gov/oah/oahsftweb **.**

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.

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

IT IS SO ORDERED.

DATE: July 9, 2018

DocuSigned by:
Cynthia Fritz
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CYNTHIA FRITZ
Administrative Law Judge
Office of Administrative Hearings