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 PREHEARING CONFERENCE FOR UNEXPEDITED HEARING
PARLIER UNIFIED SCHOOL DISTRICT.	

On October 7, 2016, a telephonic prehearing conference was held before Administrative Law Judge Rebecca Freie, Office of Administrative Hearings. Alfonso Padron, Student's advocate, appeared on behalf of Student. Karen Gilyard and Carlos Gonzalez, Attorneys at Law, appeared on behalf of Parlier 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 October 11, 12, and 13, 2016, and continuing day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at the Parlier High School Library, located at 603 Third Street, Parlier, California 93648. 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, Parlier 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. Parlier has certified that the facilities used for this case comply with the law. Parlier shall inform OAH immediately if it is unable to comply with this order.

Prior to the beginning of the hearing, Parlier 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 Parlier's legal representative/s 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 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, and during the lunch recess. 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 issues at the non-expedited due process hearing, and the proposed resolutions, are listed below.

1) Did Parlier commit a procedural violation resulting in a denial of a free appropriate public education for Student from the time he began to attend Cesar Chavez Elementary school to September 5, 2013, by failing to comply with its child find obligation as to Student?[1]

2) Did Parlier commit a procedural violation resulting in the denial of a FAPE to Student by:

a) failing to conduct an assessment that met all legal requirements for a special education assessment in 2013;

b) failing to provide accurate descriptions of Student's present levels of academic achievement and functional performance in the IEP dated September 5, 2013;

c) failing to develop measurable goals to address social skill deficits and off-task behavior in Student's September 5, 2013 IEP and IEP's thereafter; and

d) failing to provide parent with a copy of the functional behavioral analysis following Parent's request in 2016?

3) Did Parlier deny Student a FAPE for the 2013-2014, and 2014-2015 school years by:

a) failing to provide Student with a behavioral intervention plan in the IEP dated September 5, 2013; and

b) failing to design and then implement an appropriate behavior intervention plan at Student's February 16, 2016 IEP team meeting?

[1]Student shall provide this date at the commencement of the hearing.

Parlier objects to any issues that concern events prior to the two year period immediately preceding the filing of this complaint on August 4, 2016. Parlier also objects to any issues related to manifestation determination IEP's. On the first day of hearing, Student shall provide evidence as to why there should be an exception to the two-year statute of limitations in this matter, as stated in Education Code section 56505, subdivision (l). The ALJ shall rule from the bench if she is able to make that determination following Student's presentation of evidence on the first day of hearing. Otherwise, that determination shall be made in the Decision. OAH will not rule again on any issues that were part of the expedited hearing in this matter.

Proposed Resolution

Student is requesting compensatory education in the form of academic tutoring and counseling.

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 exhibit binders shall be consecutively paginated or 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 the ALJ rules that it is admissible. Student delivered his evidence binder to Parlier, rather than sending it to Parlier's attorneys. The ALJ shall make the determination at hearing as to whether this renders any of Student's exhibits inadmissible.

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. At the PHC the parties indicated that they have already met and conferred regarding witnesses. Student's advocate was ordered to immediately notify Parlier's attorney if the need to present evidence concerning the tolling of the statute of limitations will change the previously agreed-upon order of witnesses.

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. Additionally, the parties shall be prepared at the end of each day of hearing to discuss the witnesses to be presented the next day and the time the testimony of each such witness is expected to take.

5. Scope of Witness Examination. Following the presentation of evidence concerning the tolling of the statute of limitations, 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. 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. The order in which the parties present their cases in chief shall be subordinate to the need for each witness to appear only once.

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. 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 asked to have any witness testify telephonically.

7. Electronic Recording of Hearing.

a. Audio Recording. Neither party intends to make an audio recording of the hearing. The parties were advised that a request must be made to the ALJ to record the hearing, and if it is granted, recording shall be 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 October 7, 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 during the hearing unless permission to the contrary is obtained from the ALJ.

13. Special Needs and Accommodations. In his PHC statement, Student asked that OAH provide an interpreter for this hearing since it will be open to the public, and Student believes several potential observers are monolingual in Spanish. The ALJ denied the request for an interpreter. OAH does provide interpreters for witnesses or parties at hearing, but this does not extend to observers of an open 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. Prospective witnesses will be excluded.

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 NOON ON OCTOBER 20, 2016, 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 AND EACH ADVOCATE 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: October 10, 2016

DocuSigned by:

Rebecca Freie

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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings