BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. FRESNO UNIFIED SCHOOL DISTRICT,	OAH Case No. 2012100242
FRESNO UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2012100291 ORDER FOLLOWING PREHEARING CONFERENCE

On April 14, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Margaret M. Broussard, Office of Administrative Hearings (OAH). Tania Whiteleather, Attorney at Law, appeared on behalf of Student. S.J. Nam, Attorney at Law, appeared on behalf of the Fresno Unified School District (Fresno). Diandra Netto, Attorney at Law, was also present on behalf of the 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 at the **Fresno Unified School District Professional Development Center located at 1833 E Street, Fresno, California 93706.**[1] It shall take place on May 8 and 9, 2014, and continue day-to-day thereafter, Monday through Thursday, at the discretion of the ALJ. On all hearing days, the hearing shall begin at 9:00 a.m. and end at 5:00 p.m., unless otherwise ordered.

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

[1] At a minimum for the hearing, the room shall have separate tables capable of being moved into a courtroom configuration, as follows: (1) one table for Student's representatives; (2) one table for District's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table. District shall ensure that all parties and the ALJ have drinking water available to them.

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. The purpose of the hearing is the determination of the appropriate equitable compensatory remedy, based upon Fresno's denial of a free appropriate public education to Student, from October 3, 2010 through the end of Student's eligibility for special education on December 31, 2013, as found in the Decision issued on January 23, 2014.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall use letters to identify exhibits in a way that makes clear the party offering it (such as "SA" or "DA"). 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 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. ANY DOCUMENTS FROM THE FIRST PART OF THE BIFURCATED HEARING THAT A PARTY WISHES TO RELY UPON IN THIS SECOND PART OF THE HEARING MUST BE MARKED AND INCLUDED IN THE NEW EVIDENCE BINDERS TO ENSURE A CLEAR RECORD IS MADE.

EACH PARTY SHALL ALSO INCLUDE A COPY OF THE ASSESSMENT FROM DR. HOWARD GLIDDEN AND EVOLIBRI IN THEIR EVIDENCE BINDER.

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 a written declaration under penalty of perjury, and the ALJ rules that it is admissible.

4. Witnesses.

a) Each party is responsible for procuring the attendance at hearing of its own witnesses. The ALJ will notify Dr. Glidden and Ms. Johnston of their testimony schedule. Each party shall make witnesses under its control reasonably available to the other party. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses twice or 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.

b) Student has identified 11 witnesses to be called at the hearing, and Fresno has identified 8 witnesses. By May 5, 2014, the parties shall produce a tentative

witness list and schedule, identifying the witnesses each party intends to call. The revised witness list shall contain an estimate of the length of each witness's direct examination and cross-examination testimony. The ALJ will finalize the witness schedule on the first day of hearing. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for their testimony.

c) Dr. Glidden and Ms. Johnston will testify on May 8, 2014. Student's witnesses will be called next and then Fresno will call its witnesses. The ALJ requested, and the parties agreed, to have Dr. Glidden and Ms. Johnston discuss the assessment results and compensatory education recommendations with each other on the record, should the ALJ so choose.

d) Should either party wish to communicate with Dr. Glidden or Ms. Johnston or request their presence at any time, for any reason, before the hearing, the party wishing to communicate will send a letter to the expert and a copy of the letter to the other party and OAH. The letter must contain the following information:

1) The expert is not required to speak with the party requesting the communication or be available to any party prior to the hearing for any reason.

2) Should the expert agree to speak to a party or be available to a party prior to the hearing, the costs for such will not be borne by OAH, but will be subject to a separate fee agreement between the party and the expert.

3) Details of any arrangement made between the party and the expert will be subject to examination at hearing and will not be subject to privilege.

e) Should either party decide to put on evidence that compensatory education for Student can be accomplished through any particular existing program, such as programs operated by Fresno, Fresno County Office of Education or any other entity, the parties will notify each other of the name and location of the proposed program(s) as early as possible and no later than April 18, 2014. The parties will work together, by April 18, 2014, at 5:00 p.m., to create a schedule for observations of the proposed program(s) prior to April 29, 2014, at 5:00 p.m.

5. Scope of Witness Examination. 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, so the parties shall be required to establish their cases in chief during the first appearance of a witness.

6. Telephonic Testimony. No party has requested telephonic testimony at this time. Should either party wish to seek to present a witness by telephone, the party shall move in advance for leave to do so; 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.

7. Electronic Recording of Hearing.

a. Audio Recording. At present, neither party intends to make an audio recording of the hearing. Should either party request to record the hearing, 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; and 3) the operation of the party's recording mechanism will not be allowed to delay the hearing.

8. 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. Motions. At this time, Fresno intends to submit a motion to continue the hearing. Fresno shall submit the motion no later than April 15, 2014, at 5:00 p.m., and Student shall respond to the motion no later than April 17, 2014, at 5:00 p.m. Fresno may also submit a motion to stay the hearing based upon an appeal of the liability portion of the bifurcated hearing. No other prehearing motions are pending or contemplated. Any motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not made prior to or during this prehearing conference.

10. Compensatory Education and Reimbursement. Both parties shall provide evidence regarding the need, type, amount, and duration for any proposed compensatory education services.

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 or set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ.

13. Special Needs and Accommodations. At present neither party anticipates the need for any special accommodation for any witness or party.

14. Hearing Closed To the Public. At the request of Parent, the hearing will be closed to the public.

15. 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.

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

IT IS SO ORDERED.

DATE: April 14, 2014

/s/
MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings