

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

Plaintiff,

v.

ITT EDUCATIONAL SERVICES, INC.  
dba ITT TECHNICAL SERVICES,

Defendant.

NO. CIV. 11-2504 KJM KJN

STATUS (PRETRIAL SCHEDULING)  
ORDER

KERRY KIRKSEY  
OPPORTUNITY COMMISSION,

Plaintiff-Intervenor,

v.

ITT EDUCATIONAL SERVICES, INC.  
dba ITT TECHNICAL SERVICES,

Defendant.

An initial scheduling conference was held in this case on March 29, 2012; David Offen-  
Brown appeared for plaintiff; Rachel Langston appeared for plaintiff-intervenor; Thomas  
McInerney appeared for defendant. Having reviewed the parties' Joint Status Report filed on  
March 22, 2012, and discussed a schedule for the case with counsel at the hearing, the court  
makes the following orders:

////

1 I. SERVICE OF PROCESS

2 All named defendants have been served and no further service is permitted without leave  
3 of court, good cause having been shown.

4 II. ADDITIONAL PARTIES/AMENDMENTS/PLEADINGS

5 No further joinder of parties or amendments to pleadings is permitted without leave of  
6 court, good cause having been shown. *See* FED. R. CIV. P. 16(b); *Johnson v. Mammoth*  
7 *Recreations, Inc.*, 975 F.2d 604 (9th Cir. 1992).

8 III. JURISDICTION/VENUE

9 Jurisdiction is predicated upon 28 U.S.C §§ 1331 and 1367(a). Jurisdiction and venue  
10 are not disputed.

11 IV. DISCOVERY

12 Initial disclosures as required by Federal Rule of Civil Procedure 26(a) have been  
13 completed. All discovery shall be completed by October 31, 2012. In this context, “completed”  
14 means that all discovery shall have been conducted so that all depositions have been taken and  
15 any disputes relative to discovery shall have been resolved by appropriate order if necessary and,  
16 where discovery has been ordered, the order has been obeyed. All motions to compel discovery  
17 must be noticed on the magistrate judge’s calendar in accordance with the local rules of this  
18 court.

19 V. DISCLOSURE OF EXPERT WITNESSES

20 All counsel are to designate in writing, file with the court, and serve upon all other  
21 parties the name, address, and area of expertise of each expert that they propose to tender at trial  
22 not later than **August 31, 2012**. The designation shall be accompanied by a written report  
23 prepared and signed by the witness. The report shall comply with Fed. R. Civ. P. 26(a)(2)(B).  
24 By **September 21, 2012**, any party who previously disclosed expert witnesses may submit a  
25 supplemental list of expert witnesses who will express an opinion on a subject covered by an  
26 expert designated by an adverse party, if the party supplementing an expert witness designation  
27 has not previously retained an expert to testify on that subject. The supplemental designation

28 ////

1 shall be accompanied by a written report which shall also comply with the conditions as stated  
2 above.

3 Failure of a party to comply with the disclosure schedule as set forth above in all  
4 likelihood will preclude that party from calling the expert witness at the time of trial. An expert  
5 witness not appearing on the designation will not be permitted to testify unless the party offering  
6 the witness demonstrates: (a) that the necessity for the witness could not have been reasonably  
7 anticipated at the time the list was proffered; (b) that the court and opposing counsel were  
8 promptly notified upon discovery of the witness; and (c) that the witness was promptly made  
9 available for deposition.

10 For purposes of this scheduling order, an “expert” is any person who may be used at trial  
11 to present evidence under Rules 702, 703, and 705 of the Federal Rules of Evidence, which  
12 include both “percipient experts” (persons who, because of their expertise, have rendered expert  
13 opinions in the normal course of their work duties or observations pertinent to the issues in the  
14 case) and “retained experts” (persons specifically designated by a party to be a testifying expert  
15 for the purposes of litigation). Each party shall identify whether a disclosed expert is percipient,  
16 retained, or both. It will be assumed that a party designating a retained expert has acquired the  
17 express permission of the witness to be so listed. Parties designating percipient experts must  
18 state in the designation who is responsible for arranging the deposition of such persons.

19 All experts designated are to be fully prepared at the time of designation to render an  
20 informed opinion, and give their bases for their opinion, so that they will be able to give full and  
21 complete testimony at any deposition taken by the opposing party. Experts will not be permitted  
22 to testify at the trial as to any information gathered or evaluated, or opinion formed, after  
23 deposition taken subsequent to designation. All expert discovery shall be completed by **October**  
24 **31, 2012.**

25 VI. MOTION HEARING SCHEDULE

26 All dispositive motions, except motions for continuances, temporary restraining orders or  
27 other emergency applications, shall be heard no later than **January 18, 2013**. The parties may

28 ////

1 obtain available hearing dates by calling Casey Schultz, the Courtroom Deputy, at (916) 930-  
2 4193.

3 All purely legal issues are to be resolved by timely pretrial motions. Local Rule 230  
4 governs the calendaring and procedures of civil motions with the following additions:

5 (a) The opposition and reply must be filed by 4:00 p.m. on the day due; and

6 (b) When the last day for filing an opposition brief falls on a legal holiday, the  
7 opposition brief shall be filed on the last court day immediately preceding  
8 the legal holiday.

9 Failure to comply with Local Rule 230(c), as modified by this order, may be deemed consent to  
10 the motion and the court may dispose of the motion summarily. *Brydges v. Lewis*, 18 F.3d 651,  
11 652-53 (9th Cir. 1994).

12 The court places a page limit of twenty (20) pages on all moving papers, twenty (20)  
13 pages on oppositions, and ten (10) pages for replies. All requests for page limit increases must  
14 be made through the courtroom deputy clerk at least fourteen (14) days prior to the filing of the  
15 motion.

16 The parties are reminded that a motion *in limine* is a pretrial procedural device designed  
17 to address the admissibility of evidence. The court will look with disfavor upon dispositional  
18 motions presented at the Final Pretrial Conference or at trial in the guise of motions *in limine*.

19 The parties are cautioned that failure to raise a dispositive legal issue that could have  
20 been tendered to the court by proper pretrial motion prior to the dispositive motion cut-off date  
21 may constitute waiver of such issue.

## 22 VII. SEALING

23 No document will be sealed, nor shall a redacted document be filed, without the prior  
24 approval of the court. All requests to seal or redact shall be governed by Local Rules 141  
25 (sealing) and 140 (redaction); protective orders shall not govern the filing of sealed or redacted  
26 documents on the public docket. The court will only consider requests to seal or redact filed by  
27 the proponent of sealing or redaction. If a party plans to make a filing that includes material an  
28 opposing party has identified as confidential and potentially subject to sealing, the filing party

1 shall provide the opposing party with sufficient notice in advance of filing to allow for the  
2 seeking of an order of sealing or redaction from the court.

3 **VIII. FINAL PRETRIAL CONFERENCE**

4 The Final Pretrial Conference is set for **February 21, 2013**, at 3:30 p.m. At least one of  
5 the attorneys who will conduct the trial for each of the parties shall attend the Final Pretrial  
6 Conference. If by reason of illness or other unavoidable circumstance a trial attorney is unable  
7 to attend, the attorney who attends in place of the trial attorney shall have equal familiarity with  
8 the case and equal authorization to make commitments on behalf of the client.

9 Counsel for all parties are to be fully prepared for trial at the time of the Final Pretrial  
10 Conference, with no matters remaining to be accomplished except production of witnesses for  
11 oral testimony. The parties shall confer and file a joint pretrial conference statement by  
12 **February 7, 2013**. The provisions of Local Rule 281 shall apply with respect to the matters to  
13 be included in the joint pretrial statement. In addition to those subjects listed in Local Rule  
14 281(b), the parties are to provide the court with a plain, concise statement that identifies every  
15 non-discovery motion tendered to the court and its resolution.

16 Failure to comply with Local Rule 281, as modified by this order, may be grounds for  
17 sanctions.

18 Concurrently with the filing of the Joint Final Pretrial Conference Statement, counsel  
19 shall submit to chambers the word processing version of the statement, in its entirety (including  
20 the witness and exhibit lists) to: [kjmorders@caed.uscourts.gov](mailto:kjmorders@caed.uscourts.gov).

21 The parties shall, in a concise manner, jointly identify only undisputed core facts  
22 separately that are relevant to each claim. Disputed core facts should then be identified in  
23 the same manner. The parties are reminded not to identify every fact in dispute but only  
24 those disputed facts that are essential to the formulation of each claim. Each disputed fact  
25 and undisputed fact should be separately numbered or lettered. Where the parties are  
26 unable to agree what are the core disputed facts, they should nevertheless list core  
27 disputed facts in the above manner.

28 /////  
29

1 Each party shall identify the points of law which concisely describe the legal issues of the  
2 trial which will be discussed in the parties' respective trial briefs. Points of law should reflect  
3 issues derived from the core undisputed and disputed facts. Parties shall not include argument or  
4 authorities with any point of law.

5 The parties shall prepare a joint statement of the case in plain concise language which  
6 will be read to the jury at the beginning of the trial. The purpose of the joint statement is to  
7 inform the jury what the case is about.

8 The parties are reminded that pursuant to Local Rule 281 they are required to attach to  
9 the Final Pretrial Conference Statement an exhibit listing witnesses and exhibits they propose to  
10 offer at trial. After the name of each witness, each party shall provide a brief statement of the  
11 nature of the testimony to be proffered. The parties may file a joint list or each party may file  
12 separate lists. These list(s) shall not be contained in the body of the Final Pretrial Conference  
13 Statement itself, but shall be attached as separate documents to be used as addenda to the Final  
14 Pretrial Order.

15 Plaintiff's exhibits shall be listed numerically. Defendant's exhibits shall be listed  
16 alphabetically. The parties shall use the standard exhibit stickers provided by the court: pink for  
17 plaintiff and blue for defendant. In the event that the alphabet is exhausted, the exhibits shall be  
18 marked "AA-ZZ". However, if the amount of defendant exhibits exceeds "ZZ" exhibits shall be  
19 then listed as A-3, A-4, A-5 etc. All multi page exhibits shall be stapled or otherwise fastened  
20 together and each page within the exhibit shall be numbered. The list of exhibits shall not  
21 include excerpts of depositions, which may be used to impeach witnesses. In the event that  
22 plaintiff(s) and defendant(s) offer the same exhibit during trial, that exhibit shall be referred to  
23 by the designation the exhibit is first identified. The court cautions the parties to pay attention to  
24 this detail so that all concerned, including the jury, will not be confused by one exhibit being  
25 identified with both a number and a letter. The parties are encouraged to consult concerning  
26 exhibits and, to the extent possible, provide joint exhibits, which shall be designated as JX and  
27 listed numerically, e.g., JX-1, JX-2.

28 ////

1 The Final Pretrial Order will contain a stringent standard for the offering at trial of  
2 witnesses and exhibits not listed in the Final Pretrial Order, and the parties are cautioned that the  
3 standard will be strictly applied. On the other hand, the listing of exhibits or witnesses that a  
4 party does not intend to offer will be viewed as an abuse of the court's processes.

5 Counsel shall produce all trial exhibits to Casey Schultz, the Courtroom Deputy, no later  
6 than 3:00 p.m. on the Friday before trial.

7 Discovery documents to be listed in the pretrial statement shall not include documents  
8 which will be used only for impeachment and in rebuttal.

9 The parties also are reminded that pursuant to Rule 16 of the Federal Rules of Civil  
10 Procedure it will be their duty at the Final Pretrial Conference to aid the court in: (a) the  
11 formulation and simplification of issues and the elimination of frivolous claims or defenses; (b)  
12 the settling of facts that should properly be admitted; and (c) the avoidance of unnecessary proof  
13 and cumulative evidence. Counsel must cooperatively prepare the joint Final Pretrial  
14 Conference Statement and participate in good faith at the Final Pretrial Conference with these  
15 aims in mind.<sup>1</sup> A failure to do so may result in the imposition of sanctions which may include  
16 monetary sanctions, orders precluding proof, elimination of claims or defenses, or such other  
17 sanctions as the court deems appropriate.

18 The court will hear any motions in limine on the date set for final pretrial  
19 conference. Any motions are due **January 31, 2013**; oppositions are due **February 7, 2013** and  
20 replies by **February 14, 2013**.

21 IX. TRIAL SETTING

22 The trial is set for **March 25, 2013** at 9:00 a.m. The parties estimate a trial length of  
23 approximately five days. Trial briefs are due by **March 11, 2013**.

24 ////

25 ////

26 \_\_\_\_\_  
27 <sup>1</sup> "If the pretrial conference discloses that no material facts are in dispute and that the  
28 undisputed facts entitle one of the parties to judgment as a matter of law," the court may  
summarily dispose of the case or claims. *Portsmouth Square v. Shareholders Protective Comm.*,  
770 F.2d 866, 868-69 (9th Cir. 1985).

1 X. SETTLEMENT CONFERENCE

2 No settlement conference is currently scheduled. The parties notified the court they wish  
3 to participate in the court's Voluntary Dispute Resolution Program (VDRP) sometime after **May**  
4 **1, 2012**. When the parties are ready for a referral to VDRP, they should file a joint request in  
5 writing.

6 In addition, should the parties wish to participate in a settlement conference with the  
7 judge of this court, they should file a joint request in writing, notifying the court if they are  
8 willing to stipulate to the trial judge acting as settlement judge and to waive any disqualification.  
9 Counsel are instructed to have a principal with full settlement authority present at the Settlement  
10 Conference or to be fully authorized to settle the matter on any terms. At least seven (7)  
11 calendar days before the Settlement Conference, counsel for each party shall submit to the  
12 chambers of the settlement judge a confidential Settlement Conference Statement. Such  
13 statements are neither to be filed with the Clerk nor served on opposing counsel. Each party,  
14 however, shall serve notice on all other parties that the statement has been submitted. If the  
15 settlement judge is not the trial judge, the Settlement Conference Statement shall not be  
16 disclosed to the trial judge.

17 XI. MODIFICATION OF STATUS (PRETRIAL SCHEDULING) ORDER


18 The parties are reminded that pursuant to Rule 16(b) of the Federal Rules of Civil  
19 Procedure, the Status (Pretrial Scheduling) Order shall not be modified except by leave of court  
20 upon a showing of good cause. Agreement by the parties pursuant to stipulation alone does not  
21 constitute good cause. Except in extraordinary circumstances, unavailability of witnesses or  
22 counsel does not constitute good cause.

23 XII. OBJECTIONS TO STATUS (PRETRIAL SCHEDULING) ORDER

24 This Status Order will become final without further order of the court unless objections  
25 are filed within fourteen (14) *calendar* days of service of this Order.

26 IT IS SO ORDERED.

27 DATED: April 2, 2012.

28   
UNITED STATES DISTRICT JUDGE