BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. MARYSVILLE JOINT UNION SCHOOL DISTRICT AND TWIN RIVERS UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013060425 ORDER FOLLOWING PREHEARING CONFERENCE

On August 19, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Rebecca Freie, Office of Administrative Hearings (OAH). Daniel Shaw, Attorney at Law, appeared on behalf of Student. Heather Edwards, Attorney at Law, appeared on behalf of Twin Rivers Unified School District (Twin Rivers). Paul Gant, Attorney at Law appeared on behalf of Marysville Joint Unified School District (Marysville). The PHC was recorded.

Based on discussion of the parties, the ALJ issues the following order:

1. Hearing Dates, Times, and Location. The hearing on the first issue of this bifurcated matter, as stated below, shall take place on August 26-29, 2013, and if necessary, September 3, 2013, at OAH's offices at 2349 Gateway Oaks Drive, Suite 200, Sacramento, California 95833.[1] If necessary, the hearing shall then continue day-to-day, Monday through Thursday as ordered by the ALJ. The hearing shall begin at 1:30 p.m. the first day of the hearing and at 9:00 a.m. all other days, 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 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. Marysville's attorney shall notify OAH immediately as to witnesses not under its control who were subpoenaed to appear at a different location and now need to be re-subpoenaed.

[1] On July 11, 2013, OAH granted a joint motion of the Twin Rivers and Marysville to bifurcate the issue of waiver of the two year statute of limitations. It is this issue which is scheduled to be heard, as noted below. Other issues that are not subject to the two year statute of limitations, as determined by the ALJ at the currently scheduled hearing, shall be heard at a later date to be determined by the parties during this initial bifurcated hearing.

2. Issue. The issue to be determined by this part of the bifurcated due process hearing is listed below:

Do either or both of the two exceptions to the two year statute of limitations, as contained in Education Code section 56505, subdivision (l), apply to the facts in this case, such that Student's claims prior to June 5, 2011, are actionable?

The parties understand that the wording of this issue will be discussed, and may be changed at the beginning of the due process hearing. The parties understand that this issue will be determined by both the evidence presented at hearing, as well as the applicable statutory, regulatory and case law as determined by the ALJ hearing the matter. Student, with no objection from the other parties, asked that parties be permitted to file written closing briefs following the conclusion of the due process hearing, and this request was granted. Unless otherwise ordered at the due process hearing, the parties' closing briefs shall be filed with OAH no later than close of business on September 11, 2013, and the ALJ shall make every effort to have the Decision issued no later than September 18, 2013.[2]

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 Twin Rivers exhibit, and the letter "M" in the case of Marysville's exhibits. Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be numbered sequentially or Bates-stamped. Each exhibit binder shall contain a detailed table of contents. The parties represent that they intend to 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 cover of Student's evidence binder(s) shall be white, the Twin Rivers's cover shall be blue, and Marysville's cover shall be red. 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. The parties shall not be permitted to call any witnesses not disclosed in the party's prehearing conference statement

[2] A continuance shall be granted following the conclusion of the hearing to permit the parties to file these written closing briefs.

except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

The parties are ordered to meet and confer by close of business on August 21, 2013, as to the schedule of witnesses. The parties have agreed to coordinate the availability and order of testimony of witnesses to ensure that there is a witness available to testify at all times during the hearing, and to ensure that the hearing is completed as scheduled. 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.

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. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

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 examinations.

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. No witness will be heard by telephone unless all these requirements have been fulfilled. Student's motion to allow a witness who resides in Iowa to testify telephonically is granted.

7. Order of Presentation of Evidence and Burden of Proof. This matter involves three parties. The order of presentation of evidence shall be as follows: Student, the Twin Rivers, and Marysville. If a witness is to be called by more than one party, the party cross-examining the witness shall initially be permitted to also ask the questions s/he would have asked on direct examination. Student has the burden of proof in this matter.

8. Motions. Other than the rulings concerning written closing arguments and telephonic testimony, 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 August 19, 2013.

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. 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.

11. Special Needs and Accommodations. At present none of the parties anticipates the need for special accommodation for any witness or party, or for interpreter services.

12. Hearing Open/Closed To the Public. The hearing will be closed to the public.

13. 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 THE BUSINESS 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 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.

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

IT IS SO ORDERED.

Dated: August 19, 2013

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings