BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: STUDENT, v. FORTUNA UNION HIGH SCHOOL DISTRICT; KELSEYVILLE UNIFIED SCHOOL DISTRICT AND KONOCTI UNIFIED SCHOOL DISTRICT.	OAH Case No. 2014080602 ORDER FOLLOWING PREHEARING CONFERENCE; GRANTING REQUEST TO BIFURCATE ISSUES; GRANTING REQUEST TO CONTINUE DATES; AND SETTING DUE PROCESS HEARING SCHEDULE

On September 29, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Adeniyi A. Ayoade, Office of Administrative Hearings. James Stoepler and Timothy Poe, Attorneys at Law, appeared on behalf of Student. Carl D. Corbin, Attorney at Law, appeared on behalf of the Fortuna Union High School District, Kelseyville Unified School District, and Konocti Unified School District. The PHC was recorded. Based on discussion of the parties, the ALJ issued the following order:

Following the PHC, the matter was reassigned to ALJ Margaret Broussard. Any peremptory challenges to ALJ Broussard must be filed no later than three business days from the date of issuance of this order.

1. Motions. The following motions were made and decided as follows.[1]

Motion to Bifurcate Issues

The parties jointly moved to bifurcate the matter. They request that the ALJ determine the issue of residency as a threshold issue, prior to the determination of the substantive issues in this matter. The parties contend that there are three school districts in this matter and a determination of Student's district of residence during the time period raised in this matter may limit or eliminate the participation of one or more of the school districts.

[1] Other than as discussed herein above, no other pretrial motions are pending. 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 September 29, 2014.

Education Code section 56501, subdivision (a), provides that the appropriate party in a special education due process hearing is the public education agency involved in the educational decisions of the child. That agency is determined by the residency of the pupil. (Ed. Code, §§ 48200, 56028.) If one of the school districts in this matter is not the district of Student's residency, the action may have been brought against the wrong party.

The federal and state law pertaining to special education due process administrative proceedings does not contain a specific reference to the procedure of bifurcating issues for trial. While certain sections of the Administrative Procedures Act do not apply to special education proceedings, OAH looks to them for guidance. Pursuant to the APA, such authority resides in the discretion of the ALJ, provided the separate hearings are conducive to judicial economy or efficient and expeditious use of judicial resources. (See Gov. Code, § 11507.3, subd. (b).) After evaluating the facts in this case, the Parties' request to bifurcate the issue of residency is granted.

Motion to Continue Due Process Hearing Dates

The parties jointly seek a continuance of the due process hearing to allow for the resolution of the residency issue. Good cause exists to continue the prehearing conference and due process hearing dates. Accordingly, the request to continue the dates in this matter is granted. The dates are continued and reset as follows:

Mediation:	**November 12, 2014, <u>at 9:30 a.m</u>.**
	The Mediation shall be held at: Kelseyville Unified School District, 4410 Konocti Road, Kelseyville, CA 95451
Prehearing Conference:	**December 1, 2014, <u>at 3:00 p.m</u>.**
Hearing:	**December 9-11, 2014, at 9:00 a.m.,** and shall continue day to day, Monday through Thursday at the discretion of the ALJ until the hearing is concluded

Motion to Change Due Process Hearing Location

The request by the districts to change the due process hearing location to Kelseyville is denied at this time. Student shall be allowed time to file a written opposition to the request.

2. <u>Hearing Dates, Times, and Location.</u> The parties waived their right to present witnesses and participate in an in-person hearing on the bifurcated issues. Accordingly, the

hearing on the bifurcated issues listed below shall be submitted on the written record. The parties jointly agreed to submit the following: a stipulated statement of facts; and simultaneous written briefs and arguments. The written briefs and arguments shall be submitted to OAH by 5:00 p.m. on Friday, October 10, 2014. If, after receiving the written briefs and arguments submitted by the parties, the ALJ determines that additional information is needed in order to issue a decision, the ALJ may request such additional information.

3. Bifurcated Issues. Pursuant to the agreement of the parties, the bifurcated issues pending determination in this matter are as follows:

1) While Student's parent lived within the geographical boundaries of Fortuna Union High School, was Konocti Unified School District or Fortuna Union High School District responsible for providing Student, a non-conserved adult, with a free appropriate public education from the time Student moved into the boundaries of Konocti?

2) While Student's parent lived within the geographical boundaries of Fortuna, was Kelseyville Union School District or Fortuna responsible for providing Student, a non-conserved adult, with a free appropriate public education from the time Student moved into the boundaries of Kelseyville until the time he relocated within the boundaries of Konocti?

3) If Student is entitled to compensatory education for the time he received special education services from Kelseyville, is Fortuna or Kelseyville responsible for providing the compensatory services?

4) If Fortuna is responsible for providing Student with a FAPE, can Fortuna require Student to relocate back within the boundaries of Fortuna in order to serve Student?

4. Settlement. The parties are encouraged to continue working together to reach an agreement before the matter is submitted. If the parties believe a mediator may assist them in settlement negotiations, they should submit a request for mediation as soon as possible. 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 THE PARTIES SHOULD SIMULATANEOUSLY 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.

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

DATE: October 2, 2014

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings