BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

TWIN RIVERS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023050327

ORDER FOLLOWING PREHEARING CONFERENCE FOR HEARING BY VIDEOCONFERENCE

JUNE 23, 2023

On June 19, 2023, Administrative Law Judge Robert G. Martin, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Sheila Bayne, Attorney at Law, appeared on behalf of Student. Attorney Bayne's associate, Lynda Williams, Attorney at Law, also attended the PHC. Tilman Heyer, Attorney at Law, appeared on behalf of Twin Rivers Unified School District, referred to as Twin Rivers. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

MOTIONS

TWIN RIVERS MOTION TO DISMISS STUDENT'S CLAIMS

On June 2, 2023, Twin Rivers filed a motion to dismiss all of Student's issues in this action with prejudice based on the doctrine of res judicata, also called claim preclusion. (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824 (*DKN Holdings*).) Twin Rivers made its motion on grounds that Student's Issues 1-8, 10, and 12 were previously asserted in OAH Case number 2023020613 and dismissed with prejudice in that action, and that Student's Issues 9, 11 and 13 are based on the same transactional nucleus of facts as the issues raised in Case number 2023020613, and could have been raised in that action.

ALL ISSUES

Claim preclusion prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them. (*DKN Holdings, supra,* 61 Cal.4th at p. 824.) It bars claims that were, or should have been, advanced in a previous suit involving the same parties. (*Ibid.*) Claim preclusion arises if a second suit involves: (1) the same cause of action (2) between the same parties (3) after a final judgment on the merits in the first suit. (*Ibid.*) If claim preclusion is established, it operates to bar relitigation of the claim altogether. For purposes of applying claim preclusion, a "cause of action" is the right to obtain redress for a harm suffered, regardless of the specific remedy sought or the legal theory (common law or statutory) advanced. (*Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 798.) Even where there are multiple legal theories upon which recovery might be predicated, one injury gives rise to only one claim for relief. (Ibid.) A judgment for the defendant is a bar to a subsequent action by the plaintiff based on the same injury to the same primary right, even though he

presents a different legal ground for relief. (*Ibid.*) When two actions involving the same parties seek compensation for the same harm, they generally involve the same primary right. (*Ibid.*)

As to all issues, Twin Rivers' motion was based on the determination of the ALJ at the April 24, 2023 PHC in Case number 2023020613 that Parent and Student's advocate had refused to participate in resolution sessions with Twin Rivers on March 8, 2023 and March 30, 2023 to discuss the due process complaint and the facts forming the basis of Student's complaint. (See 34 C.F.R. § 300.510(a)(2) (2006).) In doing so, Parent and advocate in both instances acted in bad faith and obstructed any chance of a resolution of the case. In the second instance, Parent and advocate also disregarded a March 27, 2023 OAH order directing Student to comply with title 34 Code of Federal Regulations section 300.510, and participate in an appropriate resolution session.

At the April 24, 2023 PHC, the ALJ rejected as disingenuous Student's argument that attendance at the March 8, 2023, and March 30, 2023 meetings satisfied the requirement for participating in a resolution session. Because of Student's repeated disregard for the law, and OAH's order directing Student to participate, the ALJ concluded it was appropriate to dismiss Student's case.

The ALJ stated on the record at the PHC that the dismissal would be with prejudice. However, the written order issued the same day, after the PHC, ordered only that the matter should be dismissed, and did not state that the dismissal with prejudice. OAH practice is that dismissals are presumptively without prejudice, unless expressly stated in the written order. A dismissal without prejudice does not operate as a final judgment on the merits.

Further, even if the written order had indicated that it was with prejudice, it would not have operated as a final judgment on the merits for purposes of claim preclusion. The cases cited by Twin Rivers in support of this proposition all involved voluntary dismissals with prejudice, also called retraxits. (See, e.g., *Torrey Pines Bank v. Superior Court* (1989) 216 Cal.App.3d 813, 819–820 ["White's voluntary dismissal with prejudice of his lawsuit . . .constituted a retraxit and determination on the merits invoking the principles of res judicata barring relitigation of those issues as affirmative defenses."].) An involuntary dismissal, such as the one at issue here, is not a retraxit, and does not operate as a final judgment on the merits. (*Schlosser v. Wollersheim* (Cal. Ct. App., July 16, 2008, No. B192191) 2008 WL 2756351, at *8 (unpublished).)

STUDENT'S ISSUES 9, 11 AND 13

The Education Code contains a specific provision limiting the application of claim preclusion in a special education proceeding. The provision states that the procedural safeguards in the code "do not preclude a parent from filing a separate due process hearing request on an issue separate from a due process hearing request already filed." (Ed Code, § 56509. See also 20 U.S.C. § 1415(o); 34 C.F.R. § 300.513(c) (2006).) Therefore, although parties are precluded from relitigating causes of action already heard in previous due process proceedings, parents are not precluded from filing a new due process complaint on issues that could have been raised and heard in the first case, but were not. Education Code, section 56509 applies in this case to Student's issues 9, 11, and 13, which would not be barred in this action even if the order dismissing Student's claims in Case number 2023020613 had operated as a final judgment on the merits.

For the reasons above, Twin Rivers' motion to dismiss is denied as to all Student's issues.

STUDENT'S MOTION FOR SANCTIONS

On June 8, 2023, Student filed a motion asking OAH to sanction Twin Rivers for bringing its motion to dismissed based on claims preclusion. Student contended Twin Rivers' motion was completely unfounded and without merit, and a frivolous tactic brought in bad faith to deprive Student of his due process. Student sought an award of costs Student incurred in opposing the motion to dismiss.

OAH may order a party to reimburse expenses either to OAH or to another party incurred "as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Cal. Code. Regs., tit. 5, § 3088, subds. (a) & (e); see Gov. Code, § 11455.30, subd. (a).) In light of the ambiguity arising from the ALJ's statement of intent at the PHC in Case number 2023020613 to dismiss Student's claims with prejudice, and the ALJ's subsequent written order that did not specify such a dismissal, Twin River's motion was reasonable, and neither in bad faith nor frivolous.

Student's motion for sanctions is denied.

HEARING DATES, TIMES, AND LOCATION

DUE PROCESS HEARING

The hearing will take place on June 27, 28 and 29, 2023, and continue day to day at the discretion of the ALJ. The hearing shall begin at 9:30 AM each day and generally end at 3:30 PM, unless otherwise ordered. The parties anticipate it will take eight days to 10 days to complete the hearing. Additional hearing dates will be discussed with the ALJ during the hearing.

HEARING LOCATION

OAH is authorized to conduct due process hearings by videoconference or telephone. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) OAH will conduct the due process hearing by videoconference using the Zoom application. Unless otherwise ordered, participants are required to appear by videoconference using computer or device with video capability and Zoom.

The parties shall immediately notify all potential witnesses of the hearing dates and shall subpoena witnesses, if necessary, to ensure that the witnesses will appear to testify. A party's failure to notify or subpoena a witness to testify will not be considered good cause to continue the hearing. Instructions for issuing and responding to subpoenas and optional forms for subpoenas can be found on the website at https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena.

ISSUES AND PROPOSED RESOLUTIONS

The issues at the due process hearing, and proposed resolutions, as alleged in the complaint and clarified by the parties and the ALJ during the PHC are:

ISSUES

1. Did Twin Rivers deny Student a free appropriate public education, called a FAPE, by failing to assess Student in the following areas when conducting its triennial assessment of Student for Student's annual individualized education program team meeting, or IEP, held September 29, 2022:
    a. Occupational therapy?
    b. Functional behavior?

c. College awareness and career awareness?
d. Other health impairment based on attention deficit and hyperactivity disorder?
e. Educationally related mental health services?
f. Potential for regression?

2. Did Twin Rivers deny Student a FAPE by predetermining the IEP offer at Student's September 6, 2022 and September 29, 2022 IEP team meetings, by:
    a. Conducting the September 6, 2022 IEP team meeting without Parent attending?
    b. Failing to honor Parent's request at the September 29, 2022 IEP team meeting to change Student's classroom?
3. Did Twin Rivers' September 29, 2022 IEP deny Student a FAPE, for the 2022-2023 school year to the filing of the complaint on May 9, 2023, by failing to find Student eligible for special education services under a secondary category of speech or language impairment?
4. Did Twin Rivers' September 29, 2022 IEP deny Student a FAPE for the 2022-2023 school year to the filing of the complaint on May 9, 2023, by failing to offer Student placement with neuro-typically developing peers to the maximum extent possible for 2022-2023 school year?
5. Did Twin Rivers September 29, 2022 IEP deny Student a FAPE for the 2022-2023 school year to the filing of the complaint on May 9, 2023, by failing to offer Student adequate goals in the areas of:
    a. Occupational therapy?
    b. Behavior?
    c. Transition services, career awareness services and college awareness?
    d. Functional reading?

e. Functional math?

f. Speech and language inferencing?

g. Speech and language pragmatic language?

h. Speech and language expressive language?

6. Did Twin Rivers' September 29, 2022 IEP deny Student a free appropriate public education, for the 2022-2023 school year to the filing of the complaint on May 9, 2023, by failing to offer Student related services Student needed in order to receive educational benefit in the areas of:

    a. Occupational Therapy?

    b. Behavior?

    c. Transition services, career awareness services and college awareness services?

7. Did Twin Rivers' September 29, 2022 IEP deny Student a free appropriate public education for the 2022-2023 school year to the filing of the complaint on May 9, 2023, by failing to offer Student a 1:1 academic/behavior aide?

8. Did Twin Rivers September 29, 2022 IEP deny Student a FAPE for the 2022-2023 school year to the filing of the complaint on May 9, 2023, by failing to offer Student appropriate accommodations of:

    a. Visual support?

    b. Use of a calculator?

9. Did Twin Rivers September 29, 2022 IEP deny Student a FAPE for the 2022-2023 school year to the filing of the complaint on May 9, 2023, by failing to offer student an health emergency plan??

10. Did Twin Rivers September 29, 2022 IEP deny Student a FAPE for the 2022-2023 school year to the filing of the complaint on May 9, 2023, by failing to offer parent training in autism and emotional disturbance?

11. Did Twin Rivers September 29, 2022 IEP deny Student a FAPE for the 2022-2023 school year to the filing of the complaint on May 9, 2023, by failing to offer Student home-based applied behavior analysis therapy, and clinic meetings?

A party must immediately file a written request for relief if the issues as stated in this Order do not reflect their understanding of the issues as clarified at the prehearing conference.

PROPOSED RESOLUTIONS

The resolutions requested by Student include a decision finding Student the prevailing party on all issues, and ordering Twin Rivers to conduct district assessments in the areas of educationally related mental health services, functional behavior, and fund independent educational evaluations in occupational therapy, and college and career awareness and transition. Student also requests OAH order Twin Rivers to train staff in IEP development, offer Student appropriate goals, placement in a general educational classroom for at least 60% of the school day, a full time one-to-one aide at school and during transportation, a behavior intervention plan, a health emergency plan, Parent training in autism and emotional disturbance, transition services including one-to-one transition counseling, community based work exploration, life skills instruction, one-to-one counseling services, and home and clinic-based applied behavior analysis therapy.

Twin Rivers filed its response to Student's complaint on May 19, 2023. (*M.C. v. Antelope Valley Union High School Dist.* (9th Cir. 2017) 858 F.3d 1189, 1199-1200.)

EXHIBITS

The parties shall serve their exhibits on each other in compliance with Education Code section 56505, subdivision (e)(7). The parties shall upload their exhibits electronically according to the Order Setting Procedures for Filing Exhibits Electronically. Timely uploading electronic hearing exhibits five business days before the first day of hearing constitutes that party's timely exchange of evidence in compliance with Education Code section 56505, subdivision (e)(7). If further assistance is needed, please contact OAH at OAHSEOps@dgs.ca.gov.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not timely exchanged as required by Education Code section 56505, subdivision (e)(7) shall not be admitted into evidence at the hearing unless the ALJ rules that it is admissible.

IDENTIFYING EXHIBITS AND PAGE NUMBERS

Each exhibit must be identified by a letter and number. Student must use the letter S before the number to identify Student's exhibits. Twin Rivers must use the letter D, for district, before the number to identify its exhibits. For example, S-1 means Student's exhibit 1 and D-1 means Twin Rivers' exhibit 1. A cover sheet with this identifying letter and number should be the first page of each exhibit. The electronic evidence program will automatically number the exhibits and additional page numbering or bates stamping should not be added.

CONTENT

Each exhibit must consist of one document. Separate documents may not be combined into one exhibit. Emails or letters may be consolidated into one exhibit if they are part of a single chain of messages. Exhibits should be in chronological order.

Parties should include resumes or curriculum vitae for each witness expected to testify as an expert.

Twin Rivers' exhibits must include a copy of the school calendar for each school year in question.

Electronic copies of exhibits filed with OAH shall be filed by 5:00 PM at least five business days before the first day of hearing. Please refer to the General Order OAH issued with the Scheduling Order that contains the Order Setting Procedures for Filing Exhibits Electronically. It includes instructions for how to file exhibits electronically. Beginning three business days before the hearing, the electronic evidence system will not allow parties to upload exhibits unless permitted by the ALJ during the hearing at the ALJ's discretion.

WITNESSES

The parties shall serve their list of witnesses on each other in compliance with Education Code section 56505. No party shall be permitted to call any witnesses not timely disclosed except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

Parties are responsible for ensuring that all participants are familiar with and follow the Instructions for Joining the Online Due Process Hearing provided with this Order. Participants who have not previously used the Zoom application, may find

informative instructions on at by visiting, Getting Started with Zoom at https://support.zoom.us/hc/en-us/categories/200101697.

The parties are responsible for ensuring that witnesses join the virtual hearing room at the designated date and time to testify. Witnesses are required to join the due process hearing by computer and appear by videoconference unless they do not have the necessary computer equipment. If a witness does not have the necessary equipment, the ALJ may permit the witnesses to appear by audio only or by telephone. "Audio only" means using a computer without video. A witness's inability to attend the hearing by videoconference will be discussed at the start of the hearing.

The parties are responsible for producing their own witnesses unless otherwise ordered by the ALJ. Parties shall make witnesses under their control reasonably available. The parties must schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses out of order.

Twin Rivers has agreed to make current employees available as witnesses without need for subpoena. Twin Rivers is ordered to inform Student if any witness identified by Student as a Twin Rivers employee is no longer employed by Twin Rivers, and will require a subpoena to appear as a witness, by close of business the day following service of Student's final witness list. Twin Rivers may either agree to accept service for witnesses under its control, or provide Student with the witness' most recent contact information.

The ALJ has discretion to limit the number of witnesses and the time allowed for testimony. Education Code, section 56505.1, subdivision (h), empowers the ALJ to set a reasonable limit on the length of the hearing after consideration of four factors. The first two factors are the issues to be heard and the complexity of facts to be proven. The

second two factors are the ability of the parties or their representatives to present their respective cases and the parties' estimates of the time needed to present their cases.

MEET AND CONFER

The parties are encouraged to review and shorten their witness and exhibit lists before the hearing. Evidence may be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear.

The parties were ordered to meet and confer on June 23, 2023 at 10:00 AM to discuss scheduling witnesses and how much time each witness will take. Student's attorney shall place the call to Twin Rivers' attorney to start the meet and confer. The parties shall discuss any issues related to counsel and witnesses appearing by videoconference for hearing, electronically viewing exhibits during the hearing, and subpoenas, if any. The parties should attempt to eliminate duplicate exhibits from their hearing exhibits. The parties shall discuss whether they can produce a written stipulation as to pertinent facts, contentions, resolutions and the authenticity and admissibility of documents to shorten the length of time needed for the hearing.

PARTICIPANT INFORMATION FORM

Both parties have an ongoing obligation to ensure that OAH has current information on the Participant Information Form filed with OAH and shall file an updated Form as necessary. The Participant Information Form is not served upon the opposing party. The ongoing obligation to ensure that the Participant Information Form filed with OAH is current does not change the parties' statutory obligation to timely disclose their witnesses to the other party(s) at least five business days prior to hearing. The parties must file an updated Participant Information Form to inform OAH of any

changes, additions, or deletions, including the required information no later than 5:00 PM at least two business days before the first day of hearing.

Any contact information provided shall be used for the limited purpose of issuing subpoenas or for contacting a witness to attend the hearing. Any contact information shall not be disclosed to any other person.

EVIDENCE PRESENTATION

In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 62.) In this case Student requested the hearing and bears the burden of proof. Student's case-in-chief shall be presented first, followed by Twin Rivers', unless otherwise ordered.

WITNESS LISTS

The parties must provide a joint proposed witness list to the ALJ on the first day of hearing. The list should include the first and last name of the witness, which party is calling the witness to testify, and include dates and time estimates of each witness's expected testimony. In the event an agreement cannot be reached, each party shall prepare a separate written list. Twin Rivers must have witnesses available in case there is no agreement.

At the beginning of the hearing, the ALJ and the parties will discuss the length of time anticipated for each witness and scheduling issues for individual witnesses. The ALJ will finalize the witness schedule. Parties must be prepared at the end of each day to discuss the witnesses to be presented the next day and the estimated time for the testimony of each witness.

SCOPE OF WITNESS EXAMINATION

Each witness will be called to testify only once, except for rebuttal purposes. All parties must examine a witness on all issues when the witness is first called to testify. Requiring a witness to appear only once takes priority over the order in which parties present their case-in-chief.

AUDIO ONLY OR TELEPHONIC TESTIMONY

Whether a witness may appear by audio only or telephone instead of videoconference 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 audio only or telephone shall request permission to do so before the hearing. Any party seeking to present a witness who cannot access exhibits electronically must inform the ALJ at the beginning of the hearing.

ELECTRONIC RECORDINGS

AUDIO RECORDING

Twin Rivers request permission to make an audio recording of the hearing. Permission to make an audio recording is subject to the ALJ's discretion and based upon the following conditions:

1. the OAH recording is the only official recording;
2. the parties shall turn their recording device on and off at the same time that the ALJ is on and off the record to avoid recording conversations while off the record;

3. operation of the party's recording mechanism will not be allowed to delay the hearing;
4. a party's recording may not be given, provided or played to a witness, or potential witness;
5. the recording is subject to the same confidentiality as the due process hearing; and
6. participants shall not take screenshots of the videoconference nor share or publish any portion of the videoconference or audio recording.

Twin Rivers' request is granted. Either party may make an audio recording of the hearing, subject to the conditions above.

VIDEO RECORDING

No party, witness or anyone else may videorecord any part of the proceedings or stream live through any means.

RECORDINGS AS EXHIBITS

Recordings may not be uploaded electronically without the ALJ's permission. The ALJ has discretion to admit or exclude evidence in the form of a recording. Any request to submit a recording shall be considered at the time of hearing.

The ALJ may grant or deny the request or grant the request subject to certain conditions. The party offering the recording must establish that all or a part of the recording is relevant. The ALJ may request a transcript of the portion of the recording requested or have the party offering the recording to provide an exact identifiable portion of the recording the party seeks to admit. The identities of any person speaking on the portion of the tape being introduced must be established. An ALJ may allow the

opposing party to offer additional portions of a recording to establish the context, or to rebut, the recording.

COMPENSATORY EDUCATION OR REIMBURSEMENT

Any party seeking reimbursement for expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of the expenditures. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education. Documents offered as evidence to support a request for reimbursement must be separated by vendor.

MOTIONS

No other prehearing motions are pending or contemplated. Any motion that was not filed three business days before the PHC, shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not timely filed.

STIPULATIONS

Stipulations to pertinent facts, contentions, resolutions and authenticity and admissibility of documents are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in writing prior to the start of the hearing.

CONDUCT OF PARTICIPANTS AND HEARING ROOM DECORUM

All participants to the videoconference should observe the same decorum as in an in-person due process hearing. Participants must conduct themselves in a professional and courteous manner at all times. Cellular phones, telephones and computer notifications must be shut off or set to silent during the hearing unless the

ALJ grants permission otherwise. Participants should appear from a private location, unless otherwise ordered. Participants should take reasonable efforts to minimize background noise and maintain adequate room lighting. Use of virtual background images are at the discretion of the ALJ. Witnesses are prohibited from reading exhibits, documents, notes, text messages, telephones or computers while testifying, unless permitted to do so by the ALJ. The parties, their representative and witnesses are prohibited from passing notes to, exchanging electronic messages with, or signaling the witness in any way while the witness is testifying.

LANGUAGE INTERPRETERS AND REASONABLE ACCOMMODATIONS

A Ukranian language interpreter is needed. OAH will provide the interpreter. The parties requested no other accommodations.

A party or participant in this case, such as a witness, requiring reasonable accommodation to participate in a mediation or hearing may contact OAH at (916) 263-0880, or send an email to OAHADA@dgs.ca.gov as soon as the need is known. The e-mail should have "Request for Accommodation" in the Subject Line. Additional information concerning requests for reasonable accommodation is available on OAH's website at: https://www.dgs.ca.gov/OAH/Services/Page-Content/Office-of-Administrative-Hearings-Services-List-Folder/Request-Reasonable-Accommodations-for-OAH-Legal-Proceedings.

HEARING OPEN OR CLOSED TO THE PUBLIC

At Student's request, the hearing is open to the public. Special education hearings are closed to the public unless a student requests the hearing to be open to the public.

An ALJ may restrict attendance because of the physical limitations of the hearing facility or take other action to promote due process or the orderly conduct of the hearing. (Cal. Code Regs., Tit. 1, § 1030.) Government Code, section 11425.20 empowers the ALJ to order an open hearing to be closed or make other protective orders to the extent necessary or proper to ensure a fair hearing in the circumstances of the case. Currently, all hearings are being conducted via videoconference without observers present or participating in the videoconference. OAH will provide the hearing recording upon request.

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 if 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. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH by visiting OAH Secure e-file at https://www.applications.dgs.ca.gov/oah/oahsftweb.

If a full and final written settlement agreement is reached after 4:00 PM the 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.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed 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 before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

FAILURE TO COMPLY

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the prehearing conference. Any discussion and conversation not referenced in this Order is not binding on the ALJ conducting the hearing and may not be relied upon by the parties. The parties should be aware that, at hearing, the ALJ conducting the hearing has discretion to reconsider any part of this Order.

IT IS SO ORDERED.



Robert G. Martin
Administrative Law Judge
Office of Administrative Hearings