BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ANTIOCH UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017061033 ORDER FOLLOWING PREHEARING CONFERENCE AND GRANTING ANTIOCH'S REQUEST FOR CONTINUANCE AND SETTING PREHEARING CONFERENCE AND DUE PROCESS HEARING; DENYING ANTIOCH'S MOTION TO DISMISS AND MOTION TO BIFURCATE ISSUE OF RESIDENCY; DENYING STUDENT'S MOTION IN LIMINE; AND GRANTING STUDENT'S AND ANTIOCH'S MOTIONS TO QUASH

On December 22, 2017, a telephonic prehearing conference was held before Administrative Law Judge Rita Defilippis, Office of Administrative Hearings. Jean Murrell Adams, Attorney at Law, appeared on behalf of Student. Amy Levine, Attorney at Law, appeared on behalf of Antioch Unified School District. The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

1. Antioch's Request for Continuance of Due Process Hearing. At the beginning of the prehearing conference, Counsel for Antioch requested a continuance of the due process hearing in this matter because she is representing Antioch in a currently ongoing due process hearing which was ordered to be continued late yesterday afternoon to December 27 and 28, and 29, 2017. These dates conflicts with the date for the first day of hearing in the present matter. Having found good cause for the request for continuance, the request for continuance is Granted.

A further prehearing conference is scheduled for February 2, 2018, at 10 a.m. The hearing is continued and shall take place on February 13 and 14, 2018, continuing day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at the Antioch Unified School District's offices located at 510 G Street, Antioch, California, 94509. The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 a.m. all other days, unless otherwise ordered.

2. Antioch's Motion to Dismiss Time Barred Claims. On December 19, 2017, Antioch filed a Motion to Dismiss Time-Barred Claims. On December 21, 2017, Student filed an opposition. Argument was heard at the prehearing conference. The basis of Antioch's Motion to Dismiss is that Student is barred from raising claims beyond the two year statute of limitations as a matter of law. Student alleged facts in his amended complaint giving notice to Antioch of its intention to seek remedies beyond the two year statute of limitations.

Based on the arguments of the parties at the prehearing conference and the filings of the parties, Antioch's Motion to Dismiss is Denied. Student properly put Antioch on notice of his intent to extend the statute of limitations and will have the burden of proof as to whether Student can prove facts sufficient to pierce the two year statute of limitations.

3. Antioch's Motion to Bifurcate the Issue of Residency. On December 19, 2017, Antioch filed a Motion to Bifurcate the issue of residency. On December 21, 2017, Student filed an opposition. Argument was heard at the prehearing conference. Antioch's Motion to Bifurcate contends that the issue of residency is dispositive of this matter and should therefore be bifurcated form the other issues in this case. Antioch claims that if Student was not in fact a resident of Antioch, Antioch would be relieved of any responsibility to provide special education services for Student for much of the 2014-2015 and 2015-2016 school years, at issue in this case, when Student was enrolled in the school district and attending Antioch schools as a general education student. Student's opposition includes claims that Antioch failed to give prior written notice of any residency issue, intentionally withheld notice until just before the scheduled hearing, and never mentioned residency, despite multiple opportunities to do so, after the district became aware of facts allegedly in support of Antioch's residency claim.

Based on the arguments of the parties at the prehearing conference and the filings of the parties, Antioch's Motion to Bifurcate the issue of residency is Denied. In the present case, Antioch filed a response to Student's amended due process complaint. Antioch agreed that no notice of any residency defense was indicated in the response. Therefore Antioch is precluded from litigating the residency defense at hearing. (See *M.C. v. Antelope Valley Union High School District* (9th Cir. 2017) 858 F.3d 1189, at page 1199, stating, "An answer to a complaint serves an important dual purpose: It gives notice of the issues in dispute and binds the answering party to a position.") Furthermore, Antioch's reasoning that the issue of residency is dispositive of this matter is rejected. Antioch offered no legal authority allowing retroactive relief, upon a later discovery of non-residency, of a local education agency's obligation to provide special education services and to follow procedural safeguards, during a timeframe that a general education student was enrolled and receiving educational services in the district's schools. Finally, there is no issue of residency in this case. The issues in this case are limited to the issues pled in the complaint and residency was not an issue.

4. Student's Motion in Limine to Exclude Evidence and Testimony. On December 19, 2017, Student filed a Motion in Limine to exclude Antioch form presenting evidence "vilifying Parent and interposing new issues of residency and Student's medical

diagnosis. On December 22, 2017, Antioch filed an opposition. Based on the filings of the parties, Student's Motion in Limine is denied. Any allegations portraying Parent in poor light can be appropriately addressed, if needed, by the undersigned ALJ at hearing. Antioch's residency claims and allegations of Student's diagnoses have not been raised as issues for hearing but were raised a defenses. Therefore Student's Motions are denied.

5. Student's Motion to Quash. On December 19, 2017, Student filed a Motion to Quash Antioch's subpoena of evidence pertaining to Student's residency and medical records. Student's Motion to Quash is Granted as the dates named in Antioch's subpoena are no longer valid in light of the granting of the continuance of hearing in this matter.

6. District's Motion to Quash and Request for Sanctions. On December 20, 2017, Antioch filed a Motion to Quash Student's Subpoena of testimony of Antioch's Board Member and included a request for sanctions. Antioch's Motion to Quash is Granted, as the dates named in Student's subpoena are no longer valid in light of the granting of the continuance of hearing in this matter. Antioch's request for sanctions is denied.

All other issues will be discussed at the continued prehearing conference.

ORDER

1. Antioch's Request for Continuance is Granted.

2. Antioch's Motion to Dismiss and Motion to Bifurcate are Denied.

3. Student's Motion in Limine is denied.

4. Student's and District's Motions to Quash are Granted.

5. Antioch's Request for Sanctions is denied.

IT IS SO ORDERED.

DATE: December 26, 2017

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Rita DeFilippis
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RITA DEFILIPPIS
Administrative Law Judge
Office of Administrative Hearings