BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. SNOWLINE JOINT UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2014090176
SNOWLINE JOINT UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2014100294 ORDER FOLLOWING PREHEARING CONFERENCE

On October 20, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ), Marian H. Tully, Office of Administrative Hearings (OAH). Connie Huang Chu, Attorney at Law, appeared on behalf of Student. Vivian E. Billups, Attorney at Law, appeared on behalf of Snowline Joint Unified School District (District). The PHC was recorded.

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

1. Hearing Dates, Times, and Location. On October 20, 2014, District filed an unopposed first request to continue the hearing in the consolidated cases from October 28, 2014, to December 8 through 11, 2014. Student agreed to the proposed dates. The parties jointly requested the PHC be continued to December 1, 2014, at 1:00 p.m. The requests are granted for good cause.

The PHC is continued to December 1, 2014, at 1:00 p.m. The hearing is continued to December 8 through 11, 2014, and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin at 1:30 p.m., on December 8, 2014, and at 9:00 a.m. on all other days unless otherwise ordered.

The hearing shall take place at District's offices located at 4075 Nielson Road, Phelan, California, 92329. District shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Rehabilitation

Act of 1973 (29 U.S.C. § 794 .), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.

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.

A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk at (916) 263-0880**,** the OAH ADA Coordinator **at OAHADA@dgs.ca.gov** or 916-263-0880 as soon as the need is made known. Additional information concerning requests for reasonable accommodation is available on OAH's website at http://www.dgs.ca.gov/oah/Home/Accommodations.aspx.

2. Motion to Dismiss. On October 17, 2014, along with its PHC Statement, District filed a motion to dismiss claims alleged to have violated section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) (ADA) on the grounds OAH lacks jurisdiction of those claims. Student did not oppose the motion.

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) OAH does not have jurisdiction to entertain claims based on Section 504 or the ADA.

The complaint alleges violations of the IDEA and the Education Code and further alleges that the facts also constitute violations of Section 504 and the ADA. Student's issues state claims under the IDEA that are within OAH's jurisdiction. To the extent the complaint includes claims based upon Section 504 and the ADA, those claims are dismissed.

3. 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 5:00 P.M. 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. 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.

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

4. All other prehearing matters will be addressed at the PHC on December 1, 2014, at 1:00 p.m.

IT IS SO ORDERED.

DATE: October 20, 2014

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings