BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>MARYSVILLE JOINT UNION SCHOOL DISTRICT. | OAH CASE NO. 2013060425<br><br>AMENDED ORDER CONTINUING DUE PROCESS HEARING[1] |

The due process hearing in this matter commenced on August 26, 2013, at the Office of Administrative Hearings (OAH) in Sacramento, California, with Administrative Law Judge (ALJ) Rebecca Freie presiding. Appearing on behalf of Student were Daniel Shaw and Rick Ruderman, Attorneys at Law. They were accompanied by Carla Fisher, who holds educational rights for Student who is over 18 years of age. Paul Gant, Attorney at Law, appeared on behalf of Marysville Joint Unified School District (District). The District's representative, Toni Vernier, Director of Student Services for the District, was also present.

This matter is bifurcated, with the initial days of hearing to address the issue of whether the California two-year statute of limitations for presenting an administrative complaint under the Individuals with Disabilities Education Act (IDEA) can be waived. (Ed. Code §56505, subdivision (l).) Student claims that her status as a foster child and failure of the District to appoint a surrogate to represent her at individualized education program (IEP) team meetings pursuant to Welfare and Institutions Code section 361, subdivision (a), and Government Code section 7579.5, may be sufficient grounds for waiving the two-year statute of limitations.[2]

Before inviting the parties to make opening statements, the ALJ advised the parties that if they intended to introduce records from Student's Juvenile Court file as evidence, they needed to provide assurances that they had complied with the provisions of Welfare and Institutions Code section 827 (section 827), pertaining to the disclosure of Juvenile Court

[1] The Order is amended to change the starting time from 9:30 a.m. to 1:30 p.m. when the hearing resumes on November 4, 2013. OAH does not conduct hearings on the first Monday morning of each month.

[2] The IEP team meetings at issue occurred during the 2009-2010 school year.

records.[3] Mr. Shaw then gave an opening statement and called Ms. Vernier as his first witness. After the oath was administered to Ms. Vernier, Student asked for a brief recess, and this request was granted. Following the recess, Student asked that a continuance of several weeks be granted for the hearing in this matter so that her Juvenile Court records could be obtained and introduced into evidence in this hearing in a manner that complies with section 827. The District objected to this request.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

Juvenile Court orders concerning Student may be important evidence for the ALJ to consider when rendering a Decision as to whether the two-year statute of limitations should be waived in this matter. Accordingly, it is important that these documents be produced by the parties in a legally compliant manner, which includes an application to the Juvenile Court pursuant to section 827 that discloses that the records are being requested for an IDEA administrative hearing. In addition, if the Juvenile Court wishes to impose protective orders concerning the production of those documents for use and possible admission into evidence in this hearing, the ALJ needs to be informed of those orders. Although the parties should have taken steps to ensure that the requirements of section 827 were met prior to the commencement of this hearing, it was evident that the parties did not consider this. Accordingly, the ALJ granted Student's request for continuance during the hearing of August 26, 2013, and confirms this in this written Order.

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[3] In their prehearing conference statements, both parties indicated that they might introduce Juvenile Court documents into evidence at hearing. During the hearing the attorneys for Student indicated that they had received copies of some Juvenile Court documents from "County Counsel," although it was unclear in which County these records are located. The District indicated that school files were the source of the documents it has in its possession.

ORDER

1. The due process hearing in this matter is continued to November 4, 2013 at 1:30 p.m., and November 5-7, 2013, at 9:00 a.m. Should additional days of hearing be necessary, the hearing will continue day-to-day, Monday through Thursday, or as ordered by the ALJ.[4]

2. Unless otherwise ordered, the hearing shall take place at OAH, 2349 Gateway Oaks Drive, Sacramento, California 95833. Should the parties agree that the location of the hearing be changed to Marysville, OAH shall be notified of the change of location no later than close of business on October 25, 2013.

Dated: August 27, 2013

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings

[4] The ALJ also has discretion to conduct the hearing on November 8, 2013, if an additional day is necessary, and the parties and witnesses are available.