BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENTS ON BEHALF OF STUDENT,

v.

MCCABE UNION ELEMENTARY SCHOOL DISTRICT,

OAH CASE NUMBER 2019040734

and

MCCABE UNION ELEMENTARY SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT,

OAH CASE NUMBER 2019050092

ORDER FOLLOWING PREHEARING CONFERENCE DENYING MOTION TO AMEND COMPLAINT AND GRANTING JOINT REQUEST FOR CONTINUANCE

On, November 18, 2019, Administrative Law Judge Rommel P. Cruz, Office of Administrative Hearings, held a telephonic prehearing conference. The Administrative

Law Judge is called an ALJ; the Office of Administrative Hearings is called OAH; and a prehearing conference is called a PHC.

Attorneys Meagan Nunez and Jennifer Varga appeared on behalf of Student. Attorney Jack Sleeth appeared on behalf of McCabe Union Elementary School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

MOTION TO AMEND COMPLAINT

On November 7, 2019, Student filed a motion to amend his due process hearing request for the second time. A due process hearing request is also referred to as a complaint. Student's second amended complaint included an additional issue in regards to educational records for the 2019-2020 school year. At the PHC, McCabe Union did not object to the motion.

The initial due process hearing requests in the consolidated matters were filed seven months ago, and numerous continuances have been granted. Granting of an amended complaint would reset the timeliness, and further delay resolution of the issues, specifically the issue as to whether Student is entitled to special education services. Furthermore, the additional issue regarding educational records may be litigated in a separate due process hearing. Accordingly, the motion to amend the complaint for the second time is denied.

CONTINUANCE

At the PHC, the parties jointly requested a continuance of the due process hearing. Student requested a continuance based on the unavailability of his expert, Dr. Jill Weckerly. Student advised that Dr. Weckerly was unavailable on the currently

scheduled dates and requested a continuance of the hearing in January 2020, when Dr. Weckerly would be available. McCabe Union requested a brief continuance due to scheduling conflicts with witnesses and counsel and requested dates in January 2020 soon after McCabe Union's winter recess.

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. OAH considers all relevant facts and circumstances in determining whether good cause exists to grant an extension. (See Cal. Rules of Court, rule 3.1332(d).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is granted. All dates are vacated. This matter will be set as follows:

Prehearing Conference will be held on January 6, 2020, at 3:00 PM. Parties have filed prehearing conference statements, and therefore, statements need not be filed unless changed circumstances warrant it. Prehearing conference motions, including motions for telephonic testimony, shall be filed no later than three business days prior to the prehearing conference or with evidence of good cause as to why it was not possible to timely file the motion.

Due Process Hearing will be held on January 14, 15, and 16, 2020. The hearing shall begin at 9:30 AM the first day, and at 9:00 AM on all other days unless otherwise ordered. The hearing shall continue day to day, as needed at the discretion of the Administrative Law Judge. The hearing will be held at McCabe Union's offices located at 710 West McCabe Road, El Centro, CA 92243.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure their availability to testify. Good cause for witness unavailability is not established by failing to properly notify or subpoena a witness.

District facilities shall fully comply 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 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities. OAH requires Districts to file written certification that the facilities provided comply with these laws.

McCabe Union must file the required certification within 3 days of this Order and provide facilities that comply with these laws.

IT IS SO ORDERED.

DATED: November 18, 2019

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Rommel P. Cruz
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Rommel P. Cruz
Administrative Law Judge
Office of Administrative Hearings