BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CLOVIS UNIFIED SCHOOL DISTRICT AND FRESNO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024010630

ORDER DENYING REQUEST FOR CONFIRMATION OF THE HEARING SCHEDULE

APRIL 2, 2024

On January 19, 2024, Student filed a Request for Due Process Hearing, referred to as a complaint, with the Office of Administrative Hearings, naming Fresno Unified School District and Clovis Unified School District. The Office or Administrative Hearings is referred to as OAH.

On February 20, 2024, Student filed an Amended Complaint pursuant to a February 5, 2024, OAH Order which determined the complaint to be insufficient. OAH subsequently dismissed the second through eighth claims of the Amended Complaint, along with proposed resolution 1c based on OAH's lack of jurisdiction over those claims.

On February 27, 2024, OAH granted the parties' joint request for continuance of the hearing to April 30 through May 2, 2024, so the parties could participate in mediation.

On March 21, 2024, Student filed a motion requesting OAH confirm the schedule for the first two weeks of hearing, including the dates for the second week of hearing. Student contends that OAH has only set the first three days of hearing, and Student estimates 15 days will be necessary for Student to prove his case given the number of witnesses and Parent's need for an interpreter. Student argues that in response to a request for the names of individuals working during the relevant periods, he received lists from Respondents with a total of 23 names. Student claims he cannot include the correct hearing dates and times on the subpoenas he intends to issue unless Student knows the hearing dates and Student wants to prepare a witness schedule.

Fresno Unified did not file a response with OAH. On March 22, 2024, Clovis Unified filed opposition on the grounds Student is not entitled to the relief requested, asserting that the request is premature. Clovis Unified argues that it has already informed Student's counsel that it will make witnesses on its staff reasonably available for hearing as well as accept service of subpoenas. Clovis Unified contends that Student has failed to explain why he cannot insert the first day of hearing on the subpoena, which provides notice of the hearing date. It argues that once the parties have met and conferred regarding the schedule after the prehearing conference, Clovis Unified can inform its staff of the specific dates and times they will be required to testify. Clovis Unified asserts it has informed Student's counsel that subpoenas are unnecessary for its employees, but Student's counsel apparently believes that by issuing subpoenas she controls the witness schedule. Clovis Unified argues it has already demonstrated a

willingness to work with Student by giving Student information it was under no obligation to provide.

APPLICABLE LAW AND DISCUSSION

It is OAH policy and practice that hearing dates beyond on the first three days are set at hearing by the Administrative Law Judge, or ALJ, presiding over the hearing, after the parties have met and conferred regarding the schedule, and they have prepared and submitted a joint witness schedule to OAH. OAH's calendar and the hearing ALJ's availability, as well as other considerations, including witness/counsel's availability, can affect the hearing schedule. ALJ's have broad authority to make orders to promote due process or the orderly conduct of the hearing. (Cal. Code Regs., Tit. 1, § 1030; subd. (e)(3); see also, Govt. Code, § 11425.20, subd. (a)(2) [The ALJ has the power to make any order necessary or proper to ensure a fair hearing.].) The purpose of OAH's general practice of ordering the parties to meet and confer after the prehearing conference prior to the hearing to attempt to agree on a joint witness list for hearing is to promote the orderly conduct of the hearing.

Here, Student has offered no persuasive justification his premature request for a hearing schedule beyond the first three days. The hearing is not scheduled to begin until April 30, 2024. No ALJ has yet been assigned to the hearing, and the parties have not yet met and conferred to discuss witness availability. Moreover, Student has failed to explain why the practice commonly used by litigators in serving subpoenas cannot be employed here. Specifically, Student has not explained why he cannot list the first day of hearing on the subpoenas to provide notice to the witnesses, and then let the witnesses know what day and time the witness should appear once the schedule has been determined by the ALJ. Moreover, Clovis Unified has already agreed to produce its staff for hearing.

Regardless of any specific day or time listed on any subpoena served by Student, the hearing schedule is often fluid, depending on the length of testimony of the witnesses, breaks in the testimony, and other issues that may come up during the hearing. Significantly, Education Code section 56505, subdivision (e) lists the rights of the parties, but those rights do not include the order in which the witnesses will appear to testify at hearing or the length of the time they will be permitted to testify. The ALJ has discretion to control the order of proof and length of time for the hearing, which necessarily can affect the length of time a witness may testify, the order of witnesses, and the hearing schedule. (Evid. Code § 320 [the court in its discretion shall regulate the order of proof]; Ed. Code, § 56505, subd. (h); see also, Code Civ. Proc., § 128 [every court shall have the power to provide for the orderly conduct of the proceedings]; Fed. Rules Evid., rule 611, 28 U.S.C. [the court controls the mode and order of examining witnesses and presenting evidence]; Evid. Code, § 765 [the court controls the interrogation].)

To the extent Student bases his motion on his counsel's opinion that he can unilaterally control the order of witnesses who testify at hearing by serving them with a subpoena for a specific date and time, Student's belief is mistaken for the reasons explained above. Accordingly, Student's motion is denied.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline
Administrative Law Judge
Office of Administrative Hearings