BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: SUMMIT PUBLIC SCHOOLS: DENALI, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2018070224 ORDER DENYING REQUEST FOR TELEPHONIC TESTIMONY AND REQUIRING PERSONAL APPEARANCE OF WITNESS

On August 27, 2018, Student filed a motion requesting the telephonic testimony of Dr. Michael Loughran in the hearing scheduled to being August 28, 2018. On August 27, 2018, Summit-Denali opposed the request for telephonic testimony. Both parties supplemented their pleadings with oral argument on the first morning of hearing, August 28, 2018.

On August 2, 2018 a subpoena *duces tecum* was issued seeking records and requiring the testimony of Dr. Loughran at the first day of hearing in this matter, August 28, 2018. A motion to quash filed by Student was granted as to the production of documents only. The order, issued by the undersigned on August 17, 2018, clearly stated that Dr. Loughran was still subject to subpoena as a witness. As the parties had stipulated to a new hearing location, Summit Denali issued a new subpoena on August 21, 2018 designating the new address for the hearing. The new subpoena also required the appearance of Dr. Loughran at hearing on August 28, 2018. The subpoena was served on Dr. Loughran on August 23, 2018. The subpoena directed Dr. Loughran to contact counsel for Summit-Denali with any questions regarding the scheduling of his testimony.

On August 27, 2018, counsel for Student requested permission to have Dr. Loughran testify by telephone due to the fact that he had hand surgery scheduled for August 29, 2018; and that the distance to the OAH offices in Oakland was an unreasonable distance for the witness to travel. The witness is located in Menlo Park, California. Dr. Loughran had not contacted counsel for Summit Denali about the scheduling of his testimony. Counsel for Summit-Denali objected to having the witness testify telephonically on the grounds that he was subpoenaed to testify on Tuesday, August 28, 2018 for which the scheduled surgery posed no conflict and that the location was the subject of a stipulation by counsel as well as being a reasonable distance to travel. Counsel sought the opportunity to evaluate the witness' testimony in person.

At hearing on August 28, 2018, Student's counsel informed the undersigned that Dr. Loughran had changed his surgery to Tuesday August 28, 2018, in order to be available for

telephonic testimony on Wednesday, August 29, 2018. No evidence was presented as to the type of surgery involved, the recovery period anticipated or when the surgery was originally scheduled; nor was evidence presented as to the reason for the change in the surgery schedule. Student has presented no evidence of good cause supporting this late motion for telephonic testimony. In this matter, Summit-Denali established it has the right to question the witness and evaluate his credibility in person.

On August 29, 2018 at approximately 9:15 a.m., the undersigned attempted to contact Dr. Loughran by telephone, on the record, to discuss his failure to appear as a witness. When no answer was received, a message was left indicating that an order would be issued with further instructions regarding his appearance.

ORDER

1. Dr. Loughran has disregarded a subpoena requiring his appearance before this tribunal. He is ordered to appear in person to testify on Thursday, August 30, 2018, at 9:00 a.m. or provide evidence no later than August 30, 2018 at 9:00 a.m. as to why his appearance is not possible on that date.

2. Summit-Denali is ordered to immediately serve a copy of this order on Dr. Loughran.

IT IS SO ORDERED.

DATE: August 29, 2018

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Penelope S. Pahl
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PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings