BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

POWAY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019100201

ORDER FOLLOWING PREHEARING CONFERENCE; GRANTING MOTION TO AMEND COMPLAINT; DENYING MOTIONS TO ORDER RELEASE OF WITNESS NAMES AND RE: CONFLICT; AND RULING MOTION TO CONTINUE MOOT

On November 25, 2019, Administrative Law Judge Elsa H. Jones, 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.

Student's Father appeared on behalf of Student and Parent, referred to collectively as Student. Justin R. Shinnefield, Attorney at Law, appeared on behalf of Poway Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following Order:

MOTION TO AMEND COMPLAINT

On October 2, 2019, Student filed a Due Process Hearing Request, referred to as a complaint, with OAH, naming Poway Unified. On November 21, 2019, Student filed a Motion to Amend the complaint, and an amended complaint. Poway Unified filed no opposition, and the motion was heard during the PHC of November 25, 2019.

An amended complaint may be filed when the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or when the hearing officer grants permission. The hearing officer may grant permission at any time more than five days before the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

The motion to amend was filed more than five days prior to the due process hearing. Therefore, it is timely and is granted. The amended complaint shall be deemed filed on the date of this Order. All applicable timelines shall be reset as of the date of this Order. OAH will issue a scheduling order with the new dates.

Student failed to file a PHC Statement in advance of the PHC. Student shall timely file a PHC Statement prior to the next scheduled PHC.

MOTION TO ORDER RELEASE OF WITNESS NAMES

On November 7, 2019, Student filed a Motion to order Poway Unified to release the identities and contact information for all of the classroom personnel who worked with Student but were not teachers. Poway Unified filed written opposition to the Motion, which was heard at the PHC. The Motion was denied. Due to the rescheduling of the hearing, Student will likely have the time to obtain the identities of these

individuals through informal means, as well as to determine whether any of them are material witnesses whose presence Student will require at hearing.

MOTION RE: CONFLICT OF INTEREST

On November 25, 2019, Student filed a Motion seeking a variety of remedies based upon an alleged conflict of interest pertaining to Poway Unified's counsel. Poway Unified had not had to opportunity to file opposition to the Motion, as the Motion was untimely filed on the day of the PHC. The motion was discussed at the PHC and denied. The motion was not only untimely, but it was also not supported by any evidence and did not establish that Poway Unified's counsel had a conflict of interest.

MOTION FOR CONTINUANCE

Also on November 25, 2019, Student filed a Request for Continuance of the hearing dates. Poway Unified's counsel did not file any opposition to the Motion. The Motion was discussed at the PHC, and ruled moot, because the hearing dates would be reset by virtue of the grant of Student's Motion to Amend the Complaint.

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 if 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. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH at https://www.applications.dgs.ca.gov/oah/oahsftweb.

If a full and final written settlement agreement is reached after 4:00 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.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed 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 before the hearing.

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

FAILURE TO COMPLY

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATED: November 26, 2019

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Elsa H. Jones
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Elsa H. Jones
Administrative Law Judge
Office of Administrative Hearings