BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF

PARENTS ON BEHALF OF STUDENT

v.

MONROVIA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021120214

ORDER FOLLOWING PREHEARING CONFERENCE FOR HEARING BY VIDEOCONFERENCE, ORDER GRANTING LEAVE TO AMEND, AND ORDER DENYING MOTION FOR SANCTIONS WITHOUT PREJUDICE

APRIL 8, 2022

On April 4, 2022, Administrative Law Judge Chris Butchko, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Rhonda Krietemeyer and Matthew Zerby, Attorneys at Law, appeared on behalf of Student. Vivian Billups, Attorney at Law, appeared on behalf of Monrovia Unified School

District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

MOTIONS

MARCH 30, 2022 MOTION TO AMEND

On March 30, 2022, Student filed a motion to amend his due process hearing request. Monrovia did not file a response to the motion, but did file a motion for sanctions against Student's counsel on April 4, 2022. The basis for the motion for sanction was that Monrovia's counsel believed the proposed amended complaint contained material that was part of confidential settlement negotiations. In response to the ALJ's questions at the PHC, Monrovia stated it had no objections to the remainder of the amended complaint. Accordingly, the ALJ directed the parties to meet and confer to see if agreement could be reached on language through which the claim could be presented without including material that Monrovia believed should be kept confidential. Student was to decide whether he wished to proceed on the proposed amended complaint he had filed or substitute a new one. On April 7, 2022, Student submitted a new proposed amended complaint. Accordingly, the March 30, 2022 proposed amended complaint having been superseded by a new amended complaint, the March 30, 2022 motion to amend is denied as moot.

APRIL 7, 2022 MOTION TO AMEND

On April 7, 2022, Student submitted a new motion to amend, which included refined language that Student believed should address Monrovia's concerns about including material from confidential settlement communications. In addition, Student did not attach the email whose inclusion Monrovia believed violated settlement confidentiality, but reserved the right to try to introduce it at hearing. Student noted

that Monrovia's counsel did not agree at the meet and confer that it would accept the new statement of the issue.

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to 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).)

Monrovia has not consented to the amendment, but informed the ALJ at the PHC that it had no objection to the previous amendment other than the inclusion of material it believed merited sanction. The April 7, 2022 motion to amend was made in response to the ALJ's instruction to reconsider the earlier motion to amend and was made more than five days prior to the scheduled start of the due process hearing on April 19, 2022. The April 7, 2022 motion to amend 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.

APRIL 4, 2022 MOTION FOR SANCTIONS

On April 4, 2022, Monrovia filed a motion to sanction Student's counsel for including confidential settlement communications in the March 30, 2022 proposed amended complaint. As Student has withdrawn the March 30, 2022 proposed amended complaint following conference between counsel, the motion for sanctions in denied without prejudice as moot. Monrovia may renew its motion for sanctions against the amended complaint if it believes there are grounds to do so.

ALL OTHER PREHEARING CONFERENCE MATTERS

All other prehearing conference matters will be taken up at the prehearing conference whose date will be set by OAH's new scheduling order.

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 PM 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.

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the prehearing conference. Any discussion and conversation not referenced in this Order is not binding on the ALJ conducting the hearing and may not be relied upon by the parties. The parties should be aware that, at hearing, the ALJ conducting the hearing has discretion to reconsider any part of this Order.

IT IS SO ORDERED.

Chris Butchko

Chris Butchko
Administrative Law Judge
Office of Administrative Hearings