BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

MT. DIABLO UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2023010234

OAH CASE NUMBER 2022120477

ORDER DENYING STUDENT'S MOTION TO RETAIN ESSENTIAL WITNESS SCHEDULE, AND CLARIFYING PROCEDURES FOR WITNESSES

MARCH 20, 2023

On March 13, 2023, the Office of Administrative Hearings, called OAH, held a prehearing conference in this matter, and subsequently issued a prehearing conference order, called a PHC, directing the parties to meet and confer no later than March 17, 2023 to discuss matters including scheduling witnesses for Phase One and Phase Two of this hearing, and how much time each witness will take. The PHC order stated that each witness will be called only once for each phase of the hearing, except for rebuttal testimony, if permitted. The PHC order stated all parties must examine a witness on all

issues for that phase when the witness is first called to testify, and that requiring a witness to appear only once for each phase of the hearing takes precedence over the order in which the parties present their case in chief. The PHC order directed the parties to be prepared at the beginning of the hearing to discuss the length of time anticipated for each witness and scheduling issues for individual witnesses, and to finalize the witness schedule for the hearing with the hearing judge.

On March 16, 2023, Student filed a Motion to Retain Essential Witness Schedule. Student's motion included a proposed witness schedule for nine days of hearing. Student requested that OAH grant Student's proposed schedule essentially intact, in part to accommodate the schedules of medical providers called as witnesses.

Student's proposed schedule identifies 13 witnesses. Student proposes to call Student and Parent on six different hearing days, and the remaining 11 witnesses each on two different days. Student's proposed witness list does not identify which witnesses will be testifying in Phase One of the hearing and Phase Two of the hearing. Student's descriptions of the subject of each witnesses' testimony do not identify any witness with knowledge of the October 27, 2021 settlement agreement that is the subject of Phase One.

Student's Motion to retain Student's witness schedule as proposed is denied. As ordered in the PHC order for this matter, Student must be prepared to discuss with the hearing judge at the beginning of the hearing a witness schedule that identifies the witnesses with knowledge of the issues relevant to Phase One of the hearing. Student must also be prepared to discuss a witness schedule in which only those witnesses testifying in Phase One are scheduled to testify twice, and in which no witness is scheduled to testify more than twice.

WITNESS PROCEDURES FOR VIDEOCONFERENCE TESTIMONY AND ACCESS TO EXHIBITS

On March 17, 2023, Student filed a request for clarification of procedures for witnesses. The request indicated Parent is not clear how witnesses will receive access to the Zoom videoconference hearing, or to evidence in the Case Center digital evidence management system. Staff has discussed the procedures for witness access with Parent on several occasions, but Parent apparently still remains uncertain.

The procedures for a party to grant its witnesses access to the Zoom videoconference hearing, and to evidence in the Case Center digital evidence management system, are described in the Scheduling Order issued by OAH to all parties on January 11, 2023. Each party is responsible for sending each of its witnesses invitations to the Zoom videoconference hearing, and to evidence in the Case Center digital evidence management system. OAH does not send these invitations. Procedures for granting witnesses access to the Zoom videoconference hearing are described at pages 31 and 32 of the Scheduling Order. Procedures for granting witnesses access to exhibits in the Case Center digital evidence management system are described at pages 31 and 32 of the Scheduling Order. All parties are expected to utilize these procedures.

IT IS SO ORDERED.



Robert G. Martin
Administrative Law Judge
Office of Administrative Hearings