BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

PALO ALTO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023060486

ORDER FOLLOWING PREHEARING CONFERENCE, ORDERING STUDENT TO FILE WRITTEN OPPOSITION TO DISTRICT'S MOTION TO COMPEL OBSERVATION, AND CONTINUING PREHEARING CONFERENCE AND HEARING

AUGUST 14, 2023

On August 14, 2023, Administrative Law Judge Christine Arden, Office of Administrative Hearings, called OAH, held a prehearing conference via videoconference. The Administrative Law Judge will be referred to as an ALJ. The prehearing conference will be referred to as a PHC.

Marc Buller, and Sarah Fairchild, Attorneys at Law, appeared on behalf of Student. Tracy Petznick Johnson, Attorney at Law, appeared on behalf of Palo Alto Unified School

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

DISTRICT'S PENDING MOTION TO COMPEL OBSERVATION

Parents unilaterally placed Student at Esther B. Clarke School, a nonpublic school, called EBC, for the 2022-2023 and 2023-2024 school years. Student's due process complaint seeks an Order finding that Palo Alto Unified School District shall reimburse Parents for the cost of sending Student to EBC during the 2022-2023 school year, and shall fund Student's placement at EBC during the 2023-2024 school year. The first day of school at EBC for the 2023-2024 school year was August 10, 2023.

One hour and thirteen minutes before the PHC convened in this case on August 14, 2023, Palo Alto Unified School District filed with OAH its Motion to Compel Observation. That motion seeks an Order finding three of Palo Alto Unified School District's professional employees shall be permitted to observe Student for two hours each while Student is in class at EBC. At the commencement of the PHC Student's attorney stated Student would not consent to Palo Alto Unified School District's observation of Student at EBC. Student's attorney further stated Student would like the opportunity to file written opposition to Palo Alto Unified School District's pending motion. Student's written opposition to the motion shall be filed with OAH by 5:00 PM on August 17, 2023.

The ALJ ordered Palo Alto Unified School District's attorney to provide copies of the three OAH orders cited at page 4 of its Motion to Compel Observation to Student's attorney by close of business on August 14, 2023. Palo Alto Unified School District will not be allowed to file a reply to Student's opposition.

HEARING DATES, TIMES, AND LOCATION

The ALJ continued the PHC and hearing because additional time is needed to accommodate Student's filing of his written opposition to Palo Alto Unified School District's Motion to Compel Observation. Neither party expressed opposition to the ALJ's continuance of the PHC and hearing.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (Ed. Code, § 56505, subd. (f)(3); Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance or imposing conditions on the continuance; and any other relevant fact or circumstance. (Cal. Rules of Court, rule 3.1332(d).)

The district's pending motion to compel observation constitutes good cause to continue the PHC and hearing. All previously scheduled dates are vacated. The case shall proceed as follows:

Prehearing Conference will be held on September 15, 2023, at 1:00 PM. All other prehearing matters shall be addressed at the September 15, 2023 PHC. All prehearing motions must be filed three business days before the PHC.

Due Process Hearing will be held on September 26, 2023, through September 28, 2023. Counsel for both parties acknowledged their availability on the above noted continued dates. However, attorney Johnson was unable to confirm the availability of the district's hearing representative on the continued hearing dates.

The hearing will be conducted via videoconference and shall begin at 9:30 AM and end at 3:30 PM on all days, unless otherwise ordered. The hearing shall continue day to day at the discretion of the ALJ.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed.

SETTLEMENT

The parties shall immediately inform OAH in writing if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. If the parties reach a settlement 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.

If a full and final written settlement agreement is reached after 5:00 PM the day before the 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. 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.

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

Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

Christine Arden

Christine Arden
Administrative Law Judge
Office of Administrative Hearings