BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

PALM SPRINGS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022090902

ORDER FOLLOWING PREHEARING CONFERENCE, GRANTING REQUEST FOR CONTINUANCE OF PREHEARING CONFERENCE AND DUE PROCESS HEARING AND DENYING MOTION TO QUASH SUBPOENA DUCES TECUM

JANUARY 13, 2023

On January 13, 2023, Administrative Law Judge Christine Arden, Office of Administrative Hearings held a telephonic prehearing conference. The Administrative Law Judge will be referred to as an ALJ. The prehearing conference will be referred to as a PHC.

Wendy Dumlao, Attorney at Law, appeared on behalf of Student. Maria Gless, Attorney at Law, appeared on behalf of Palm Springs Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

REQUEST FOR CONTINUANCE OF PHC AND HEARING WAS GRANTED

At the beginning of the PHC, the ALJ informed counsel that the statement of issues set forth in Student's PHC statement was not sufficiently specific. Student's issues presented in Student's PHC statement inappropriately applied all of Student's allegations to three different school years, when it is clear from the complaint that certain allegations against Palm Springs Unified School District apply only to certain specific school years, rather than all three of the school years addressed in Student's complaint.

Student requested a brief continuance to allow Student time to file a new PHC statement specifically stating which issues apply to each school year. Palm Springs Unified School District did not object to the continuance.

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 request for continuance is granted for good cause. All previously scheduled dates are vacated. The case shall proceed as follows:

Prehearing Conference will be held on January 27, 2023, at 10:00 AM. Student is ordered to file a new PHC statement three business days before the continued PHC. Palm Springs Unified School District is not required to file another PHC statement.

All other prehearing conference matters shall be addressed at the January 27, 2023 prehearing conference. All prehearing motions must be filed three business days before the PHC.

Due Process Hearing will be held on February 7, 2023, through February 9, 2023.

The hearing will be conducted via telephone or 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.

DISTRICT'S MOTION TO QUASH SUBPOENA DUCES TECUM WAS DENIED.

On January 10, 2023, Palm Beach Unified School District filed a Motion to Quash Subpoena Duces Tecum on the grounds that the manner of service was not indicated on the proof of service attached to the subpoena served on it. Palm Springs Unified School District also contends the request for documents contained in the subpoena is overbroad. Student filed a response to the motion on January 13, 2023, alleging the subpoena was properly served personally on the district by an attorney service.

Palm Springs Unified School District's Motion to Quash Subpoena Duces Tecum is denied because it failed to attach the subpoena at issue to the motion. At the time the motion was filed the subpoena had not yet been filed by Student with OAH. Therefore, it was not possible for OAH to review the subpoena duces tecum at issue when the motion was filed. Moreover, the district's contention that the subpoena should be quashed because the proof of service attached to the copy of the subpoena duces tecum served on it was not completed, is not a valid argument to quash the subpoena.

Therefore, the Motion to Quash Subpoena Duces Tecum is denied. The attorneys were ordered to meet and confer so that the district will not have to produce documents a second time that it has already recently provided to Student in response to Student's demand for his educational records.

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