BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT

v.

UPLAND UNIFIED SCHOOL DISTRICT

OAH CASE NUMBER 2019080542

and

UPLAND UNIFIED SCHOOL DISTRICT

v.

PARENT ON BEHALF OF STUDENT

OAH CASE NUMBER 2020010465

ORDER FOLLOWING PREHEARING CONFERENCE, GRANTING STUDENT'S REQUEST FOR CONTINUANCE

FEBRUARY 3, 2020

Administrative Law Judge Clifford H. Woosley, Office of Administrative Hearings, held a telephonic prehearing conference on January 31, 2020. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. A prehearing conference is called a PHC.

Tania L. Whiteleather appeared on behalf of Student. Christopher J. Fernandes, Attorney at Law, appeared on behalf of Upland Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

STUDENT'S MOTION TO CONTINUE HEARING

Student notified OAH and Upland's counsel that attorney Tania L. Whiteleather was retained as counsel as of today. Student moved for a continuance to allow Ms. Whiteleather to prepare for hearing. Upland stated it did not oppose the continuance request.

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. Student had not been represented by an attorney until today. A continuance to allow counsel to prepare for a hearing is appropriate. After some discussion, the parties agreed to continued dates.

All previously scheduled dates are vacated. The case shall proceed as follows:

Prehearing Conference: 1:00 PM, April 10, 2020.

All other prehearing matters shall be addressed at the April 10, 2020 prehearing conference. All prehearing motions must be filed three business days before the PHC.

Due Process Hearing: April 21, 22, and 23, 2020.

The hearing shall begin at 9:30 AM on the first day of the hearing and at 9:00 AM on all other days, unless otherwise ordered. The hearing shall continue day to day at the discretion of the ALJ.

Hearing Location: Upland Unified School District, 390 N. Euclid Avenue, Upland, California 91786.

District facilities shall fully comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the

Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities. Districts are required to file written certification with OAH that the facilities a district provides comply with these laws.

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.

STUDENT'S MOTION TO QUASH SUBPOENA DUCES TECUM

On February 3, 2020, Student filed a motion to quash a subpoena duces tecum, issued by Upland. Student withdraws the motion since the hearing has now been continued.

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.

Clifford H. Woosley
Administrative Law Judge
Office of Administrative Hearings

