BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

JULIAN UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2023010253

ORDER FOLLOWING EXPEDITED PREHEARING CONFERENCE DISMISSING EXPEDITED ISSUES WITHOUT PREJUDICE; ORDER DISMISSING ISSUE 4 FOR LACK OF JURISDICTION; ORDER DENYING MOTION TO QUASH SUBPOENAS DUCES TECUM

JANUARY 30, 2023

On January 30, 2023, Administrative Law Judge Rommel P. Cruz, 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.

Attorney Yun Hee Kim appeared on behalf of Student. Attorneys Summer Dalessandro and Jennifer Aardema appeared on behalf of Julian Union High School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

STUDENT'S REQUEST TO DISMISS EXPEDITED ISSUES

On January 27, 2023, Student filed a Request to Dismiss Expedited Issues Without Prejudice. At the PHC, the parties and the ALJ discussed the expedited issues Student sought to dismiss. Student identified as expedited issues, and requested to dismiss without prejudice, Issues 1, 2, 3, and 4, as set forth in Student's due process hearing request, called a complaint, and prehearing conference statement. Accordingly, Issues 1, 2, and 3, are dismissed without prejudice.

However, Issue 4 is outside OAH's jurisdiction. Issue 4 of Student's complaint alleges Julian Union conducted a procedurally and substantively invalid expulsion hearing and predetermined its decision to expel Student. OAH does not have jurisdiction to address claims involving a school district's disciplinary expulsion proceedings. A party has the right to present a complaint with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child. (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a free appropriate public education to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v.*

Manhattan Beach Unified School. Dist. (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) Accordingly, Issue 4 is dismissed as outside of OAH's jurisdiction.

The expedited hearing dates are vacated. This matter will proceed with the remaining non-expedited issues as scheduled.

At the PHC, Student requested to cancel the mediation set for January 31, 2023. The mediation is cancelled.

STUDENT'S MOTION TO QUASH SUBPOENAS DUCES TECUM

On January 26, 2023, Student filed a Motion to Quash Subpoenas Duces Tecum for the subpoenas issued by Julian Union to Steven Figueroa and Parent. At the PHC, based on the dismissal of the expedited issues and the vacating of the expedited hearing, Julian Union moved to withdraw the subpoenas to Figueroa and Parent. Accordingly, Student's Motion to Quash is denied as moot.

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 by visiting OAH Secure e-file 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.

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.

Rommel P. Cruz

Rommel P. Cruz
Administrative Law Judge
Office of Administrative Hearings