BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SALINAS UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2023050025

ORDER FOLLOWING PREHEARING CONFERENCE GRANTING REQUEST FOR CONTINUANCE, DENYING MOTION FOR 45 DAY HEARING TIMELINE AND DENYING MOTIONS TO QUASH SUBPOENA DUCES TECUMS

JUNE 5, 2023

On June 5, 2023, Administrative Law Judge Paul H. Kamoroff, Office of Administrative Hearings, called OAH, held a videoconference prehearing conference. The Administrative Law Judge is called an ALJ. The prehearing conference is called a PHC.

Attorney Joshua Cruz appeared on behalf of Parents and Student. Attorney Haley Fagan appeared on behalf of Salinas Union High School District, called Salinas. The PHC

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

HEARING DATES, TIMES, AND LOCATION

On May 31, 2023, Salinas filed a request to continue the due process hearing based upon the unavailability of three essential witnesses. On, June 1, 2023, Salinas amended the request. The request was accompanied by declarations and exhibits establishing the witnesses were unavailable due to prepaid trips out of state or out of the county. There have been no prior continuances for this matter.

The May 31, 2023, motion was timely filed three days prior to the prehearing conference. On June 2, 2023, Student filed an opposition to the request based upon Student's right to a speedy due process 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 request for continuance is granted for good cause. The unavailability of an essential witnesses constitutes good cause for a continuance. All previously scheduled dates are vacated. The case shall proceed as follows:

PREHEARING CONFERENCE will be held on June 30, 2023, at 1:00 PM.

The PHC will be conducted by videoconference. Except as addressed herein, all other prehearing matters shall be addressed at the June 30, 2023, PHC. All prehearing motions must be filed three business days before the PHC.

DUE PROCESS HEARING will be held on July 11, 2023, through July 13, 2023.

The hearing will be conducted by 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.

PENDING MOTIONS

On May 31, 2023, Student filed a Notice to Hold the Due Process Hearing Within the 45 Day Timeline. On June 2, 2023, Salinas filed an opposition to the motion. OAH's present Order granting Salina's request to continue renders Student's motion moot. Consequently, Student's motion is denied as moot.

On June 1, 2023, Salinas filed six motions to quash subpoenas duces tecums. On June 5, 2023, Student opposed a motion to quash subpoena duces tecum. During the PHC, Student and Salinas agreed that pending subpoenas duces tecums, filed by each side, were withdrawn because of the new hearing dates. Consequently, motions to quash filed prior to the June 5, 2023, PHC are moot and are denied on that basis. A party may file a new motion to quash if a new subpoena duces tecum is issued.

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.

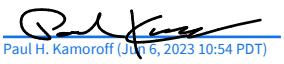
FAILURE TO COMPLY

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

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the PHC.

IT IS SO ORDERED.



Paul H Kamoroff

Administrative Law Judge

Office of Administrative Hearings