BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

ENTERPRISE ELEMENTARY SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NUMBER 2021020664

ORDER FOLLOWING PREHEARING CONFERENCE

GRANTING REQUEST FOR CONTINUANCE

MARCH 9, 2021

On March 8, 2021, Administrative Law Judge Claire Yazigi, Office of Administrative Hearings held a prehearing conference by videoconference. The Administrative Law Judge will be referred to as an ALJ. The prehearing conference will be referred to as a PHC. Kyle A. Raney, Attorney at Law, appeared on behalf of Enterprise Elementary School District. No one appeared on behalf of Student. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

Enterprise moved to continue the prehearing conference and due process hearing based on three factors: a desire to participate in mediation, the unavailability of an essential witness, and an upcoming district closure due to spring break.

Enterprise represented that both parties have expressed a desire to participate in mediation, but that it has not received response from Student as to available dates. Currently, no mediation is set in this matter.

Enterprise's motion was also based on the unavailability of Cristie Vericker, school nurse. Vericker will testify about an addendum health report Vericker prepared regarding Student. Enterprise expects that will spend the most time examining this witness because of the medical nature of this case. Vericker will be out of state during the dates currently set for hearing, at a pre-planned, required training related to other employment. The length of Vericker's out of state training will depend on a determination to be made by Vericker's other employer at some point in the future. Enterprise is unsure of the length of time Vericker will be out of state, but is certain that Vericker will be unavailable though March 18, 2021.

Further, Enterprise cited the district's closure for spring break from April 5 – 9, 2021 as another reason for its motion to continue, when Enterprise could not compel district personnel to appear at hearing as witnesses.

The motion was timely filed three days prior to the prehearing conference. The motion was not opposed.

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).)

Enterprise did not establish good cause to continue hearing based on a desire to participate in mediation absent the filing of a joint request for mediation, nor on the basis of spring break. It did demonstrate good cause to continue based on witness unavailability. The request for continuance is granted.

Due to operational need, OAH cannot accommodate the open-ended time frame Enterprise provided for Vericker's unavailability. Enterprise is certain, however, that Vericker will be unavailable through March 18, 2021, and this matter is continued accordingly.

Nothing in this order shall prevent the parties from filing a joint request for mediation once the parties offer mutually agreeable dates for mediation. Such a request shall be filed three business days prior to prehearing conference, or by March 10, 2021.

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

Prehearing Conference: March 15, 2021 at 10:00 am

All other prehearing matters shall be addressed at the March 15, 2021 prehearing conference. All prehearing motions must be filed three business days before the PHC, or March 10, 2021.

Due Process Hearing: March 23, 24, and 25, 2021.

The hearing shall begin at 9:30 AM on each day unless otherwise ordered. The hearing shall continue day to day at the discretion of the ALJ.

HEARING LOCATION

OAH is authorized to conduct due process hearings by videoconference or telephone. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) Based on state and federal guidance to address safety procedures due to the novel coronavirus, COVID-19, OAH will conduct the due process hearing by videoconference using the Microsoft Teams application. Unless otherwise ordered, participants are required to appear by videoconference using a webcam and Microsoft Teams.

The parties shall immediately notify all potential witnesses of the hearing dates and shall subpoena witnesses, if necessary, to ensure that the witnesses will appear to testify. A party's failure to notify or subpoena a witness to testify will not be considered

good cause to continue the hearing. Instructions for issuing and responding to subpoenas and optional forms for subpoenas can be found on the website at https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena.

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 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.

FAILURE TO COMPLY

The 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 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.

Claire Yazigi

Claire Yazigi (Mar 9, 2021 13:25 PST)

Claire Yazigi
Administrative Law Judge
Office of Administrative Hearings