BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024100512

ORDER FOLLOWING PREHEARING CONFERENCE GRANTING REQUEST FOR MEDIATION AND CONTINUANCE OF DUE PROCESS HEARING

NOVEMBER 22, 2024

On November 22, 2024, Administrative Law Judge Cararea Lucier, 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. Parent appeared on behalf of Student, supported by advocate Ann Ware. Attorney Diandra N. Vantrease appeared on behalf of Fresno Unified School District, referred to as Fresno. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

During the PHC, the parties jointly moved to continue the prehearing conference and due process hearing based on a mutual desire to participate in mediation.

The motion was not filed three days before the PHC. However, Fresno disclosed in its PHC statement the parties were discussing mediation and had not yet identified a mutually agreeable date. The parties thus established good cause for filing the motion less than three days before this PHC.

At the PHC, the parties were able to find mutually agreeable dates for a mediation, prehearing conference, and 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 so that the parties may participate in a mediation. All previously scheduled dates are vacated. The case shall proceed as follows:

MEDIATION DATE is December 9, 2024, 1:30 PM to 5:00 PM.
MEDIATION will occur via telephone or videoconference.
PREHEARING CONFERENCE will be held on January 10, 2025, at 1:00 PM.

The PHC will be conducted by videoconference. All other prehearing matters shall be addressed at the January 10, 2025, PHC. All prehearing motions must be filed three business days before the PHC. The parties are required to file PHC statements with OAH three business days before the January 10, 2025, PHC, if they have not already done so.

DUE PROCESS HEARING will be held January 22, 2025, through January 23, 2025.

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.

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. 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.

Cararea Lucier

Cararea Lucier
Administrative Law Judge
Office of Administrative Hearings