BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

VENTURA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021040283

ORDER FOLLOWING PREHEARING CONFERENCE FOR HEARING BY VIDEOCONFERENCE GRANTING REQUEST FOR CONTINUANCE, CONFIRMING STUDENT'S WITHDRAWAL OF MOTION TO AMEND AND TAKING NO ACTION ON STUDENT'S MOTION TO CHANGE VANUE

JULY 9, 2021

On July 9, 2021, Administrative Law Judge Jennifer Kelly, 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 call PHC.

Andrea Marcus, Attorney at Law, appeared on behalf of Parents for Student. Melissa Hatch, Attorney at Law, appeared on behalf of Ventura Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

STUDENT'S WITHDRAWAL OF MOTION TO AMEND

On April 8, 2021, Student filed a Request for Due Process Hearing, referred to as a complaint. On April 19, 2021, OAH issued an order granting Student's request to continue due process hearing dates. On July 2, 2021, OAH held a PHC. OAH continued the PHC and due process hearing based upon representations by Ventura's counsel that the parties stipulated to a continuance. The PHC was continued to July 9, 2021, at 10:00 AM and the due process hearing was continued to July 20, 2021, through July 22, 2021.

On July 6, 2021, Student filed a Motion to Amend the Due Process Hearing Request. Student withdrew the Motion to Amend at the PHC, but indicated Student intends to file a new motion to amend based upon information recently obtained from Ventura. As discussed below, in the event Student files a motion to amend, and such motion is granted by OAH, the hearing dates below will remain on calendar provided that Student makes such a request in the Motion to Amend.

JOINT REQUEST TO CONTINUE DUE PROCESS HEARING

On July 7, 2021, the parties filed a Joint Request to Continue Hearing Dates. The request was based on the unavailability of counsel and several of the parties' key witnesses.

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 parties' Joint Request for Continuance is granted for good cause. All previously scheduled dates are vacated. The case shall proceed as follows:

Prehearing Conference: September 24, 2021, at 3:00 PM.

Due Process Hearing: October 5, 2021, through October 7, 2021.

The hearing shall begin at 9:30 AM each day and generally end at 3:30 PM, unless otherwise ordered. The hearing shall continue day to day, as needed, at the discretion

of the ALJ. Prehearing conference statements and motions are due to OAH no later than three business days before the PHC or with a showing of good cause why it was not timely filed.

PARTICIPANT INFORMATION SHEETS FOR PREHEARING CONFERENCES MUST BE FILED TWO BUSINESS DAYS PRIOR TO THE DATE OF THE SCHEDULED EVENT.

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.

In light of the multiple continuances previously granted in this matter, no further continuances shall be granted absent a showing of good cause supported by declaration.

NO ACTION ON STUDENT'S MOTION TO CHANGE VENUE

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 currently conducts due process hearings by videoconference using the Microsoft Teams application. Unless otherwise ordered, participants are required to appear by videoconference using a webcam and Microsoft Teams.

On June 29, 2021, Student filed a Motion to Change Venue. Student argues virtual evidentiary hearings violate Student's due process rights and requests an order compelling the parties to appear in-person at a neutral location in Ventura, California, or to require installation of rotating 360-degree view cameras in the virtual hearing rooms.

OAH will take no action on Student's Motion to Change Venue in light of OAH's order granting the parties' joint stipulation to continue the due process hearing. Student may raise this issue at the September 24, 2021 PHC.

All other prehearing matters shall be addressed at the September 24, 2021 PHC.

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.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings