BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

MANTECA UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2023080401

ORDER GRANTING JOINT REQUEST FOR CONTINUANCE AND SETTING FURTHER HEARING DATES

DECEMBER 06, 2023

On December 5, 2023, Administrative Law Judge Ted Mann, Office of Administrative Hearings, convened the first day of hearing in this matter by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH.

Parents, mother and father, appeared on behalf of Student. Rebecca Diddams and Anne Sherlock, Attorneys at Law, appeared on behalf of Manteca Unified School District. Jody Burriss appeared as the party representative for Manteca. Interpreter Nancy Avila attended as an English-Spanish interpreter for Parents.

It was determined that Parents had been sent an incorrect link to upload documents to Case Center. As a result, Parents had been unable to upload exhibits to Case Center and had been unable to review Manteca's exhibits. The parties made a joint oral motion to continue the hearing to allow Parents to access Case Center and upload document and to allow both Parents and Manteca necessary five business days of notice of the respective exhibits.

OAH must conduct a due process hearing and issue a decision within 45 days of receiving the due process complaint, unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Resolving the due process hearing quickly is legally required. Hearings may only be continued if "good cause" is established. (Ed. Code, § 56505, subd. (f)(3).) OAH is guided by the Administrative Procedure Act and the California Rules of Court when ruling on continuance motions. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.)

Good cause to continue a hearing may include:

- An essential lay or expert witness is unavailable because of death, illness, or other excusable circumstances;
- A party is unavailable because of death, illness, or other excusable circumstances;
- A party's attorney is unavailable because of death, illness, or other excusable circumstances;
- A new attorney substitutes in, but only if the party establishes that the substitution is required in the interests of justice;
- A new party is added, and the new party has not had a reasonable opportunity to prepare for trial, or other parties have not had a

reasonable opportunity to prepare for trial regarding the new party's involvement;

- A party is unable to obtain essential testimony, documents, or other material evidence despite diligent efforts; or
- The case has a significant and unexpected change which makes the case not ready for trial.

Generally, continuances are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

Here, it was established that Parents had not had access to Case Center and had no opportunity to upload exhibits, nor did they have an opportunity to review Manteca's exhibits. As such, good cause was established to continue the due process hearing. Further continuances will be greatly disfavored and will require a showing of exceptional good cause.

The joint request is granted. All previously scheduled dates are vacated. The new dates are:

DUE PROCESS HEARING will be held on January 30, 2023, through February 1, 2023.

The due process hearing will be held by videoconference or telephone, unless otherwise ordered. The due process hearing will begin at 9:30 AM on all days, and generally end at 3:30 PM, unless otherwise ordered. The hearing will continue day to day, as needed, Mondays and Fridays included, at the discretion of the Administrative Law Judge.

The parties must immediately give potential witnesses the hearing dates, and must subpoena witnesses, if necessary, so they are available to testify. Failing to properly notify or subpoena a witness is not good cause to delay the hearing.

MEET AND CONFER

The parties are encouraged to review and shorten their witness and exhibit lists before the hearing. Evidence may be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear.

The parties are ordered to meet and confer no later than Friday, December 22, 2023, by 5:00 PM. Manteca's counsel shall initiate contact with Student's parents prior to this time to undertake the meet and confer. At the time of the meet and confer, Parents must have uploaded their exhibits into Case Center and must be able to provide a witness list to Manteca's attorney.

The parties shall be prepared to discuss scheduling witnesses and how much time each witness will take. The parties shall discuss any issues related to counsel and witnesses appearing by videoconference for hearing, electronically viewing exhibits during the hearing, and subpoenas, if any. The parties should attempt to eliminate duplicate exhibits from their hearing exhibits. The parties shall discuss whether they can produce a written stipulation as to pertinent facts, contentions, resolutions and the authenticity and admissibility of documents to shorten the length of time needed for the hearing.

As part of the meet and confer process, Manteca shall inform Student which proposed witnesses are District employees. Manteca shall also identify the witnesses on Student's list that require a subpoena. Manteca may agree to accept service for a

witness under Manteca's control or provide Student with the witness's most recent contact information.

HEARING OPEN OR CLOSED TO THE PUBLIC

On December 5, 2023, the Parents requested that the hearing is open to the public. Special education hearings are closed to the public unless Student requests the hearing to be open to the public.

An ALJ may restrict attendance because of the physical limitations of the hearing facility or take other action to promote due process or the orderly conduct of the hearing. (Cal. Code Regs., Tit. 1, § 1030.) Government Code, section 11425.20 empowers the ALJ to order an open hearing to be closed or make other protective orders to the extent necessary or proper to ensure a fair hearing in the circumstances of the case.

In this case, the parties are permitted to forward each day's Zoom links for the hearing to interested third parties. Third party attendees to the hearing are entitled to view and listen to the hearing, but are not allowed to make any recording, either audio or video, of the hearing under penalty of contempt of court. Third party attendees shall remain muted at all times, and shall not interrupt the hearing in any way. Third party attendees shall not relay information regarding testimony or exhibits to any potential witnesses until they have completed their testimony. Third party communication by a third party hearing attendee with a witness who has not testified may be grounds to exclude that witness' testimony from the hearing.

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.

FAILURE TO COMPLY

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

Ted Mann

Ted Mann

Administrative Law Judge

Office of Administrative Hearings