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 GRANTING REQUEST FOR CONTINUANCE OF PREHEARING CONFERENCE AND HEARING DATES

JULY 02, 2021

On July 2, 2021, Administrative Law Judge Ted Mann, Office of Administrative Hearings held a telephonic prehearing conference. The Administrative Law Judge will be referred to as an ALJ. The prehearing conference will be referred to as a PHC.

Andrea Marcus, Attorney at Law, did not appear on behalf of Student. She was unable to attend the rescheduled PHC at 3:00 PM after Ventura's Peremptory Challenge to the ALJ at 1:00 PM. Melissa Hatch, Attorney at Law, appeared on behalf of Ventura Unified School District. The PHC was recorded. Based upon discussions with the attorney

Hatch, whereby the parties jointly requested to reschedule the PHC and hearing dates due to attorney Marcus' unavailability for the PHC, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

The motion was not filed three days before the PHC. Parties established good cause for filing the motion less than three days before this PHC arising from attorney Marcus' unavailability at 3:00 PM, following the peremptory challenge at 1:00 PM.

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

Prehearing Conference: Friday, July 9, 2021, at 10:00 AM.

All other prehearing matters shall be addressed at the July 9, 2021 prehearing conference. There is one recently-filed, outstanding motion from each party. Both motions are currently unopposed. The parties may file timely written opposition to the respective motions, but both motions will be addressed on the record at the July 9, 2021 PHC.

Due Process Hearing: July 20, 2021 through July 22, 2021.

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

Hearing Location: By Teleconference on MS 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 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 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

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