BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT AND ROUND VALLEY INDIAN TRIBES

ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023030253

ORDER FOLLOWING PREHEARING CONFERENCE SETTING SCHEDULE RE MOTION TO DISMISS ROUND VALLEY INDIAN TRIBES, CONTINUING PREHEARING CONFERENCE AND DUE PROCESS HEARING, AND DENYING ELK GROVE'S REQUEST FOR CONTINUANCE AS MOOT

APRIL 26, 2023

On April 24, 2023, Administrative Law Judge Kara Hatfield, Office of Administrative Hearings, called OAH, 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.

Lynda Williams and Valerie Weiss, Attorneys at Law, appeared on behalf of Student. Round Valley Indian Tribes did not appear. Student's attorney, who filed the amended request for due process hearing specifically to name Round Valley Indian Tribes as a co-petitioner, expressly disclaims being the attorney for Round Valley Indian Tribes. No notice of representation has been filed on behalf of Round Valley Indian Tribes. Kyle Raney and Rebal Halabi, Attorneys at Law, appeared on behalf of Elk Grove Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

ELK GROVE'S MOTION TO DISMISS ROUND VALLEY INDIAN TRIBES AS A PARTY

On April 19, 2023, Elk Grove timely filed a motion to dismiss Round Valley Indian Tribes as a party. Student's opportunity to file a written response had not yet ended by the time of the PHC. Student requested the opportunity to address the motion in writing. The parties and ALJ discussed numerous issues regarding Elk Grove's motion and Student's Corrected Amended Complaint including Round Valley Indian Tribes in the administrative law proceeding. The parties stipulated to the following schedule and conditions to afford Student, Round Valley Indian Tribes, and Elk Grove due process:

Elk Grove is ordered to serve Round Valley Indian Tribes a copy of its motion to dismiss Round Valley Indian Tribes as a party by a method authorized by the California Code of Civil Procedure and likely to provide Round Valley Indian Tribes notice and an opportunity to be heard in this administrative law proceeding. By 5:00 PM on April 28, 2023, Elk Grove shall file either proof of service, or a status report regarding

Elk Grove's efforts to serve Round Valley Indian Tribes and its plan to promptly accomplish service.

Student is ordered to file a written response to Elk Grove's motion to dismiss Round Valley Indian Tribes as a party by 5:00 PM on May 1, 2023. Student is ordered to specifically address Sheila Bayne's authority to name Round Valley Indian Tribes as a petitioner in this administrative law proceeding when she expressly denies being the attorney for Round Valley Indian Tribes. Student is ordered to serve Round Valley Indian Tribes a copy of her written response to Elk Grove's motion to dismiss Round Valley Indian Tribes as a party, including any voluntary dismissal of Round Valley Indian Tribes as a party, by a method authorized by the California Code of Civil Procedure and likely to provide Round Valley Indian Tribes notice and an opportunity to be heard in this administrative law proceeding. Student is also ordered to provide Round Valley Indian Tribes a copy of this Order Following Prehearing Conference.

Elk Grove may file a written reply to Student's response by 5:00 PM on May 4, 2023.

HEARING DATES, TIMES, AND LOCATION

Student and Elk Grove stipulated to continue the prehearing conference and due process hearing to afford time to resolve concerns about Round Valley Indian Tribe as a party in this case and afford everyone due process.

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).)

This matter is continued for good cause. All previously scheduled dates are vacated. The case shall proceed as follows:

PREHEARING CONFERENCE will be held on May 19, 2023, at 10:00 AM.

All other prehearing matters shall be addressed at the May 19, 2023 PHC. All prehearing motions must be filed three business days before the PHC.

DUE PROCESS HEARING will be held on May 31 and June 1, 2023.

The hearing will be conducted via telephone or 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.

Elk Grove's request for a one-week continuance of the due process hearing, filed April 19, 2023, is denied as moot.

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 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.

Kara Hatfield

Kara Hatfield
Administrative Law Judge
Office of Administrative Hearings