BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

SOLEDAD UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NUMBER 2021030990

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

APRIL 12, 2021

On April 12, 2021, Administrative Law Judge Laurie Gorsline, Office of Administrative Hearings, held a prehearing conference by videoconference and telephone. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Erin Frazor, Attorney at Law, appeared on behalf of Soledad Unified School District. Parent appeared on behalf of Student. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

DUE PROCESS HEARING

During the PHC, after the mediation process was explained to Parent, Parent requested mediation and a continuance of the hearing due to having to attend recent funerals, including a funeral on April 12, 2021. District agreed to mediate and to a continuance of the hearing. The parties agreed on April 22, 2021 for mediation, May 7, 2021 at 10:00 AM for the prehearing conference and May 18, 2021 to begin the 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 ALJ reviewed the request for good cause, considered all relevant facts and circumstances, and determined that there was good cause for requesting a continuance less than three days prior to the PHC, and good cause for the requested continuance. Parent indicated she did not fully understand the mediation process prior to the PHC and was not prepared to proceed with the due process hearing because personal matters relating to recent funerals. The parties' agreement to mediate constitutes good cause for the requested continuance. The motion is granted. All dates are vacated, and the matter is continued as follows:

MEDIATION DATE is April 22, 2021, 9:00 AM to 4:30 PM.

MEDIATION will occur via telephone or video conference. OAH will send the parties an invitation by email the day before the mediation with a link to join the mediation by video conference, and a telephone number and conference ID number to join the mediation by telephone.

PREHEARING CONFERENCE will be held on May 7, 2021 at 10:00 AM. OAH will send the parties an invitation by email the day before the PHC with a link to join the mediation by video conference, and a telephone number and conference ID number to join the mediation by telephone. 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 possible to file the motion by that date.

DUE PROCESS HEARING will be held on May 18 through May 20, 2021.

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

The hearing shall begin at 9:30 AM on all days unless otherwise ordered. The hearing shall continue day to day, as needed at the discretion of the Administrative Law Judge.

HEARING LOCATION

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 will conduct the due process hearing by videoconference using the Microsoft Teams application. Unless otherwise ordered, participants are required to appear by videoconference using a webcam and Microsoft 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 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. Instructions for issuing and responding to subpoenas and optional forms for subpoenas can be found on the website at https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena.

PARTICIPANT INFORMATION FORM

Both parties have an ongoing obligation to ensure that OAH has current information on the Participant Information Form filed with OAH and shall file an updated Form as necessary. The Participant Information Form is not served upon the opposing party. The ongoing obligation to ensure that the Participant Information Form filed with OAH is current does not change the parties' statutory obligation to timely disclose their witnesses to the other party(s) at least five business days prior to hearing. The parties must file an updated Participant Information Form to inform OAH of any changes, additions, or deletions, including the required information no later than 5:00 PM at least two business days before the first day of hearing.

Any contact information provided shall be used for the limited purpose of issuing subpoenas or for contacting the witness(es) for purposes of attending the hearing and shall not be disclosed to any other person(s).

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.

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.

Laurie Gorsline

Laurie Gorsline
Administrative Law Judge
Office of Administrative Hearings