BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENTS ON BEHALF OF STUDENT,

and

SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023010055

OAH CASE NUMBER 2023010404

ORDER FOLLOWING PREHEARING CONFERENCE

CONTINUING PREHEARING CONFERENCE AND

DUE PROCESS HEARING

MAY 1, 2023

On May 1, 2023, 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 called a PHC.

Andrea Blair, Attorney at Law, appeared on behalf of Student. S. Daniel Harbottle, Attorney at Law, appeared on behalf of Saddleback Valley Unified School

District, called Saddleback Valley. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

DUE PROCESS HEARING

The due process hearing currently is scheduled for May 9, 10, and 11, 2023. On April 28, 2022, the parties filed a joint motion to continue the due process hearing. The parties' motion was supported by sworn declarations under penalty of perjury by Timothy A. Adams, attorney of record for Student, and S. Daniel Harbottle, attorney of record for Saddleback Valley. Attorneys Adams and Harbottle currently are in a due process hearing in another matter pending before OAH in Case Number 2022100859. The hearing in OAH Case Number 2022100859 commenced on April 25, 2023, and is scheduled for continued hearing dates on May 2, 3, 4, 9, 10, and 11, 2023. As a result, attorneys Adams and Harbottle are unavailable to participate in the due process hearing in this matter on May 9, 10, and 11.

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 because the attorneys of record for each party are unavailable on the currently scheduled hearing dates. All previously scheduled dates are vacated. The case shall proceed as follows:

Prehearing Videoconference: June 30, 2023, at 1:00 PM.

Due Process Hearing: July 11, 12, and 13, 2023. 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 ALJ.

All other prehearing matters shall be addressed at the June 30, 2023 PHC. The PHC statement and all prehearing motions must be filed three business days before the PHC.

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

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.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings