BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT

v.

MONROVIA UNIFIED SCHOOL DISTRICT

OAH CASE NUMBER 2022070062

ORDER FOLLOWING PREHEARING CONFERENCE GRANTING REQUEST FOR CONTINUANCE FOR MEDIATION

OCTOBER 28, 2022

On October 28, 2022, Administrative Law Judge Chris Butchko, 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. Hamlet Yarijanian, Attorney at Law, appeared on behalf of Student. Vivian Randolph, Attorney at Law, appeared on behalf of Monrovia Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

At the commencement of the PHC, the parties jointly moved to continue the prehearing conference and due process hearing so that a mediation on the Amended Due Process Hearing Request could be held.

The motion was made orally at the prehearing conference. Monrovia established good cause for not filing the motion three days before this PHC. Mediation was previously set in this matter for October 12, 2022, but it was cancelled by Monrovia because counsel was in the midst of a 16-day hearing in OAH case no. 2021120214, which did not complete until October 27, 2022. In the notice of mediation cancellation filed with OAH on October 11, 2022, Monrovia stated that it wished to continue to work on resolution with Student informally. At the PHC, Monrovia noted it could not commit to a mediation date prior to the resolution of the hearing and was unable to do so prior to the PHC.

Student joined in the request for mediation, and both sides expressed the view that mediation was likely to help the parties resolve the matter. In addition, the parties requested a continuance of less than 30 days of the hearing dates.

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).)

Finding good cause to consider the request and good cause to grant the request, the request for continuance is granted. All previously scheduled dates are vacated. The case shall proceed as follows:

1. MEDIATION DATE is Tuesday, November 8, 2022, 9:00 AM to 12:30 PM.
2. MEDIATION will occur via telephone or videoconference.
3. PREHEARING CONFERENCE will resume on Monday, November 14, 2022, at 10:00 AM.

All other prehearing matters shall be addressed at the November 14, 2022 prehearing conference. All prehearing motions must be filed three business days before the PHC. The parties may, but need not, file new prehearing conference statements.

4. Due Process Hearing will take place Tuesday, November 29, 2022, through Thursday, December 1, 2022.

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.

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.

IT IS SO ORDERED.

Chris Butchko

Chris Butchko
Administrative Law Judge
Office of Administrative Hearings