BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SAN MARCOS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020110479

ORDER FOLLOWING PREHEARING CONFERENCE GRANTING REQUEST FOR CONTINUANCE

MARCH 9, 2021

On March 8, 2021, Administrative Law Judge Elsa H. Jones, 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. Linaja Duncan, Attorney at Law, appeared on behalf of Student and Parents, collectively referred to as Student. Sarah Orloff, Attorney at Law, appeared on behalf of San Marcos. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following Order:

HEARING DATES, TIMES, AND LOCATION

Student moved to continue the PHC and due process hearing based on, among other reasons, the unavailability of Parent to attend the due process hearing.

The motion was timely filed three days prior to the PHC. San Marcos opposed the motion on the grounds, among others, that the bases for the motion were not adequately supported.

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 in view of the law and policy supporting and reflecting the importance of parental participation in the development of a special education student's educational program. All previously scheduled dates are vacated. Th case shall proceed as follows:

Videoconference PHC: April 2, 2021, at 3:00 PM.

All other prehearing matters shall be addressed at the April 2, 2021 PHC. All PHC statements and prehearing motions must be filed three business days before the PHC, or shall include facts showing good cause as to why they were not timely filed. The parties have already filed PHC statements, and need not file new ones unless changes in the case status so require.

Due Process Hearing: April 13, 2021, through April 15, 2021.

PARTICIPANT INFORMATION SHEETS FOR PHCS AND HEARINGS MUST BE FILED TWO BUSINESS DAYS PRIOR TO THE DATE OF THE SCHEDULED EVENT.

The hearing shall be held by videoconference, and shall begin at 9:30 AM on all hearing days unless otherwise ordered. The hearing shall continue day to day, as needed, 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 was 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.

Elsa Jones

Elsa H. Jones
Administrative Law Judge
Office of Administrative Hearings