BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGUITO UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2021010659

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

APRIL 30, 2021

On April 30, 2021, Administrative Law Judge Deborah Myers-Cregar, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The prehearing conference is called a PHC. The Office of Administrative Hearings is called OAH.

Cindy Lane, Attorney at Law, appeared on behalf of Student, assisted by her paralegal Pam Louvier. Sarah Sutherland, Attorney at Law, appeared on behalf of San

Dieguito Union High School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

MOTION TO CONTINUE

The parties jointly moved to continue the prehearing conference and due process hearing because they wanted to participate in a videoconference mediation and needed additional time before the due process hearing commenced. The parties had been unable to participate in a mediation previously as it had been scheduled the day before an Individualized Education Program, called IEP, team meeting, and were not able to coordinate alternate dates before the prehearing conference without the assistance of the Administrative Law Judge.

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).)

Here, the parties wish to mediate the case before the due process hearing commences, which will allow them to try to resolve the matter in a non-adversarial way. Education Code § 56503 encourages the parties to use a mediation conference or resolve their dispute in an informal, non-adversarial manner, even if a due process hearing has commenced.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

Granted. All dates are vacated. This matter will be set as follows:

Mediation will be held on May 12, 2021, at 9:00 AM to 4:30 PM. The mediation will occur by videoconference.

The Prehearing Conference will be held on May 24, 2021, at 3:00 PM. The Prehearing Conference will occur by videoconference.

The Due Process Hearing will be held on June 8, 2021, through June 10, 2021. The Due Process hearing will occur by videoconference. 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.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure their availability to testify. Good cause for witness unavailability is not established by failing to properly notify or subpoena a witness. Prehearing conference statements and motions are due to OAH no

later than three business days before the prehearing conference or with evidence of good cause why it was not possible to file the motion by that date. All other prehearing matters shall be addressed at the May 24, 2021 Prehearing Conference.

IT IS SO ORDERED.

Deborah Myers Cregar

Deborah Myers-Cregar
Administrative Law Judge
Office of Administrative Hearings