BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

DEL MAR UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2023060311

ORDER FOLLOWING PREHEARING CONFERENCE, GRANTING REQUEST FOR CONTINUANCE, DENYING MOTION TO DISQUALIFY THE ADMINSTRATIVE LAW JUDGE FOR CAUSE

JULY 17, 2023

On July 17, 2023, Administrative Law Judge Tiffany Gilmartin, 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. Parent appeared on behalf of Student. Summer Dalessando and Madisyn Ukrainetz, attorneys, appeared on behalf of Del Mar Union School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

On July 13, 2023, Student filed a motion for continuance. Del Mar was given an opportunity to be heard on the record. Parties jointly requested mediation prior to the due process hearing. Good cause was found to continue the matter to provide parties an opportunity to mediate.

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. All previously scheduled dates are vacated. The case shall proceed as follows:

MEDIATION DATE is August 30, 2023, 1:30 PM to 5:00 PM.

MEDIATION will occur via telephone or videoconference.

PREHEARING CONFERENCE will be held on September 25, 2023, at 10:00 AM.

All other prehearing matters shall be addressed at the September 25, 2023, prehearing conference. All prehearing motions must be filed three business days before the PHC.

DUE PROCESS HEARING: October 10, 11, and 12, 2023.

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.

CHALLENGE FOR CAUSE

During the prehearing conference, while the undersigned was asking questions regarding Parent's request for continuance, Parent made an oral motion to disqualify the ALJ for cause. Parent's challenge for cause alleged rudeness, failure to let Parent speak, predetermining the outcome, hostility, lack of professionalism, and inability to be impartial. Parent previously exercised her preemptory challenge on another ALJ.

Any party may request to disqualify an ALJ by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that the ALJ is disqualified. In the instant matter, where the ALJ is not adjudicating the hearing on behalf of another agency, the issue shall be determined by the administrative law judge. (Government Code § 11512(c).)

Parent provided no factual basis for recusal. The undersigned does not have any personal knowledge of the disputed facts, has never served as counsel for either party, has no financial interest in the matter, has no relationship with either party, has no bias toward either party or in any way that would impede the ability to perceive evidence or conduct proceedings. Parent's challenge for cause is denied.

FAILURE TO COMPLY

Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

Tiffany Gilmartin
Tiffany Gilmartin (Jul 18, 2023 12:04 PDT)

Tiffany Gilmartin
Administrative Law Judge
Office of Administrative Hearings