BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>TAHOE TRUCKEE UNIFIED SCHOOL DISTRICT,<br><br>v.<br><br>PARENT ON BEHALF OF STUDENT. | OAH Case No. 2018020394<br><br>ORDER FOLLOWING PREHEARING CONFERENCE; GRANTING REQUEST TO CONTINUE PREHEARING CONFERENCE AND DUE PROCESS HEARING; AND SETTING MEDIATION |

On February 26, 2018, a telephonic prehearing conference was held before Administrative Law Judge Theresa Ravandi, Office of Administrative Hearings. Alyssa R. Bivins, Attorney at Law, appeared on behalf of Tahoe Truckee Unified School District. Parents appeared on behalf of Student and were assisted by a Spanish language interpreter who interpreted the proceedings. The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

1. Student's Request for Continuance. Tahoe Truckee did not inform OAH that Parents spoke Spanish and would require the services of an interpreter and translation of documents until February 21, 2018. As such, Parents did not receive a copy of the initial scheduling order in their primary language until February 23, 2018, two days after the date by which they were required to file a prehearing conference statement and any motions. Parents did not file a PHC statement. Further, they had not received a translated copy of the request for due process nor had they received a copy of Tahoe Truckee's PHC statement.[1] Parents requested a continuance in order to receive Spanish versions of all filings and to prepare a PHC statement. Tahoe Truckee opposed the continuance request.

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. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the

[1] On February 21, 2018, Tahoe Truckee served Parents a copy of its PHC statement in English by certified mail, return receipt requested at their P.O. Box. Tahoe Truckee did not receive a return receipt, and Parents had not received this mailing as of the time of the PHC.

California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

Student established good cause for a continuance. Both parties further requested the opportunity to participate in mediation. All dates were vacated and the matter was set for the following dates:

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| Mediation: | March 8, 2018, at 10:00 a.m.[2] |
| Prehearing Conference: | March 19, 2018, at 10:00 a.m. (telephonic) |
| Due Process Hearing: | March 27-29, 2018, from 10:00 a.m. until 5:00 p.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ, unless otherwise ordered. |

The mediation and hearing shall take place at Tahoe Truckee's District's Office located at 11839 Donner Pass Road, Truckee, California, 96161. As ordered in the scheduling order, Tahoe Truckee shall provide a facility for the mediation and hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities. Tahoe Truckee shall file a written certification with OAH within two days of the date of this order.

2. Notice to Witnesses. 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, as applicable.

3. Required Filings with OAH. Parents are required to file a PHC statement in accordance with the requirements of the initial scheduling order, specifying their understanding of the issues for hearing and listing the witnesses they intend to call and the documents they intend to introduce at the time of hearing. **Parents shall file their PHC statement no later than Monday, March 12, 2018.** Parents were reminded that any document filed with OAH must be accompanied by a proof of service showing that they provided a copy of the same document to Tahoe Truckee's counsel and specifying how and

[2] Mediation and each day of hearing were scheduled for 10:00 a.m. start times to accommodate Mother's schedule in transporting Student to school in the morning. Parents were advised that hearing days generally do not conclude prior to 5:00 p.m.

when the document was provided to opposing counsel. The ALJ will not read or consider any document that does not include a proof of service.[3]

Parents were reminded that documents they intend to introduce into evidence at hearing should not be filed with OAH prior to hearing. Rather, all documentary evidence must be provided to the opposing party at least five business days prior to the start of the hearing.

3. Tahoe Truckee's Issue Number One. The ALJ informed that parties that in order to address Tahoe Truckee's Issue Number One regarding whether its offer of transportation, as specified in Student's October 2017 individualized education program, provided Student a free appropriate public education, the ALJ will need to analyze Tahoe Truckee's entire October 2017 IEP offer, both procedurally and substantively. Tahoe Truckee confirmed that it developed and offered the October 2017 IEP for Student and maintains that this IEP offers Student a FAPE.[4] Tahoe Truckee was advised that despite the narrow framing of its Issue Number One, it should be prepared at the time of hearing to present evidence as to the substantive and procedural validity of its full educational program offer.

4. Other Matters. All other matters relevant to preparing for hearing, including clarification of the issues and identification of witnesses and exhibits, will be addressed at the telephonic PHC on March 19, 2018.

IT IS SO ORDERED.

DATE: February 27, 2018

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Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

[3] The ALJ disclosed that Parents had attempted to file a 10-page document with OAH that was not accompanied by a proof of service. The ALJ did not read or consider this document. Tahoe Truckee indicated it had not received this document. The ALJ will issue a separate notice of receipt of ex parte communication, and have OAH staff attach a copy of the disclosed document.

[4] Tahoe Truckee asserts that Student's district of attendance, Washoe County School District in Nevada, is responsible for Student's academic services pursuant to its own IEP. The undersigned ALJ does not have jurisdiction regarding a Nevada IEP.