BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

DAVIS JOINT UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024050798

# ORDER FOLLOWING PREHEARING CONFERENCE DENYING WITHOUT PREJUDICE MOTION TO TREAT RESPONDENT WITNESSES AS HOSTILE AND CONTINUING DUE PROCESS HEARING AND SETTING PREHEARING CONFERENCE

AUGUST 16, 2024

On August 16, 2024, Administrative Law Judge Ashok Pathi, Office of Administrative Hearings held a prehearing conference by videoconference. The Administrative Law Judge will be referred to as an ALJ. The prehearing conference will be referred to as a PHC.

Attorney Andrea Marcus appeared on behalf of Student. Attorney Jan Tomsky appeared on behalf of Davis Joint Unified School District, called Davis. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

## STUDENT'S MOTION TO TREAT DAVIS WITNESSES AS HOSTILE

On August 13, 2024, Student filed a motion to treat witnesses who are employed by Davis as hostile, such that Student could conduct her examination through leading questions, pursuant to Evid. Code § 776(a).

Davis did not file response to Student's motion. During the PHC, Davis generally opposed the motion an improper motion in limine, but otherwise took no position on Student's motion.

Student's motion is premature and is denied without prejudice. Student may address her ability to examine any witnesses who may be employed by Davis through leading questions when those individuals are called to testify. Similarly, Davis may raise any objections to specific questions as they arise.

## HEARING DATES, TIMES, AND LOCATION

In Student's prehearing conference statement, Student requested a Spanish language interpreter. During the PHC, Student clarified that the Spanish language interpreter was needed for Parent, who would be attending each day of hearing on Student's behalf.

OAH's interpretation vendor cannot currently meet the need for multiple day interpreters. OAH is working on getting another vendor and will need to continue the hearing.

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).)

This matter is continued for good cause. All previously scheduled dates are vacated. The case shall proceed as follows:

PREHEARING CONFERENCE will be held on September 20, 2024, at 3:00 PM.

All other prehearing matters shall be addressed at the September 20, 2024, prehearing conference. The PHC will be conducted via videoconference. All prehearing motions must be filed three business days before the PHC.

Due Process Hearing will be held on October 1, 2, and 3, 2024.

The hearing will be conducted via 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.

*Ashok Pathi*

Ashok Pathi
Administrative Law Judge
Office of Administrative Hearings