BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

SEQUOIA UNION HIGH SCHOOL DISTRICT,

OAH CASE NUMBER 2023110714

OAH CASE NUMBER 2024010672

ORDER FOLLOWING PREHEARING CONFERENCE FOR HEARING BY VIDEOCONFERENCE, GRANTING REQUEST FOR CONTINUANCE, AND DENYING MOTIONS TO DISMISS IN PART

FEBRUARY 6, 2024

On February 5, 2024, Administrative Law Judge Marlo Nisperos, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Evan Goldsen, Attorney at Law, appeared on behalf of Student. Justin Manganiello, Attorney at Law, appeared on behalf of Sequoia Union High School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

DUE PROCESS HEARING

MOTION TO CONTINUE

At the PHC, Sequoia Union made an oral motion to continue the matter. Sequoia Union contended that the parties had reached an agreement to settle all claims on Sunday, the previous day. Sequoia Union claimed that both parties needed to consult an attorney who was an expert in a different area of law to effectuate the negotiated settlement agreement. Sequoia Union had not yet located an attorney to provide advice on the issue related to the settlement agreement. Sequoia Union requested a continuance to locate an expert and determine how the parties could effectuate the agreement. Student did not object to Sequoia Union's request for continuance. Student had already retained an expert to consult with on the outstanding issue related to the settlement agreement. Student joined in the request to continue.

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).)

Sequoia Union established good cause for not filing the motion three days before the PHC because the agreement was reached the day before. The parties established good cause to continue the matter to allow Sequoia Union to locate, retain, and consult an attorney with the expertise in an area related to the terms of the settlement agreement.

The request for continuance is granted for good cause. The previously scheduled due process hearing dates are vacated. The case shall proceed as follows:

The hearing will take place on February 27, 28, and 29, 2024, and continue day to day at the discretion of the ALJ. The prehearing conference was completed so an additional one is not ordered. The hearing may be held on Monday and Friday. The hearing shall begin at 9:30 AM each day and generally end at 3:30 PM, unless otherwise ordered. The parties anticipate it will take between nine and sixteen days to complete the hearing. Additional hearing dates will be discussed with the ALJ during the hearing.

HEARING LOCATION

OAH is authorized to conduct due process hearings by videoconference or telephone. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) OAH will conduct the due process hearing by videoconference using the Zoom application. Unless otherwise ordered, participants are required to appear by videoconference using computer or device with video capability and Zoom.

The parties shall immediately notify all potential witnesses of the hearing dates and shall subpoena witnesses, if necessary, to ensure that the witnesses will appear to

testify. A party's failure to notify or subpoena a witness to testify will not be considered good cause to continue the hearing. Instructions for issuing and responding to subpoenas and optional forms for subpoenas can be found on the website at https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena.

ISSUES AND PROPOSED RESOLUTIONS

The ALJ has slightly altered the statement of some issues as allowed by the holdings in *J.W. v. Fresno Unified Sch. Dist*. (9th Cir. 2010) 626 F.3d 431, 442-443, and *Ford v. Long Beach Unified Sch. Dist*. (9th Cir. 2002) 291 F.3d 1086, 1090. (But see *M.C. v. Antelope Valley Union High Sch. Dist*. (9th Cir. 2017) 858 F.3d 1189, 1196, fn. 2 [dictum].) No change in substance has been made. A party believing that an issue has been misstated or improperly omitted shall promptly file a notice in writing stating its concern and referring to supporting portions of the complaint. No motion to amend the statement of issues will be considered unless it is made in time to be resolved before the hearing.

In this Order a free appropriate public education is called a FAPE, and an individualized education program is called an IEP.

ISSUES

STUDENT'S ISSUES

1. Did Sequoia Union deny Student a FAPE from November 21, 2021, through the end of the 2021-2022 school year by:

a. Failing to assess Student in all areas of need, specifically, functional behavior, educationally related mental health services, and individual transition plan;
b. Failing to offer goals that met Student's needs, specifically, behavior and social emotional;
c. Failing to offer services in all areas of need, specifically, remediation in math, reading, and writing and behavior support;
d. Failing to offer a behavior intervention plan;
e. Failing to provide Parent information pertaining to Student's behaviors that impeded his learning;
f. Failing to inform Parent that Student could be eligible for an IEP until the age of 22 if he earned a certificate of completion;
g. Placing Student on diploma track;
h. Failing to provide Parent periodic IEP goal progress updates; and
i. Failing to timely present the 2021 psychoeducational assessment at an IEP team meeting?

2. Did Sequoia Union deny Student a FAPE during the 2022-2023 school year by:
    a. Failing to assess Student in all areas of need, specifically, functional behavior, educationally related mental health services assessment, individual transition plan, and beginning October 6, 2022, failing to assess him for dyslexia;
    b. Failing to offer goals that met Student's needs, specifically, behavior and social emotional;
    c. Failing to offer services in all areas of need, specifically, remediation in the areas of math, reading, and writing, and behavior support;

d. Failing to offer a behavior intervention plan that met Student's needs;
e. Failing to offer an appropriate placement at the May 8, 2023 manifestation determination review meeting;
f. Failing to implement the new goals and behavior intervention plan offered at the May 8, 2023 manifestation determination review meeting;
g. Failing to provide Parent information pertaining to Student's behaviors that impeded his learning;
h. Failing to provide Parent periodic IEP goal progress updates;
i. Failing to inform Parent that Student could be eligible for an IEP until the age of 22 if he earned a certificate of completion
j. Placing Student on diploma track;
k. Misrepresenting the facts and circumstances surrounding the April 28, 2023, incident, at the May 8, 2023 manifestation determination review meeting;
l. Failing to provide educational records Parent requested in after the April 28, 2023 incident, prior to the May 8, 2023 manifestation determination review meeting; and
m. Failing to provide Parent with documents and video recordings during or before the May 8, 2023 manifestation determination review meeting?

3. Did Sequoia Union deny Student a FAPE during the 2023-2024 school year through December 29, 2023, by:

a. Failing to assess Student in all areas of need, specifically, educationally related mental health services assessment, dyslexia, and age-appropriate individual transition plan;
b. Failing to offer goals that met Student's needs, specifically, behavior and social emotional;
c. Failing to offer services in all areas of need, specifically, remediation in the areas of math, reading, and writing;
d. Failing to offer behavior support services that met Student's needs;
e. Failing to offer an appropriate placement at the December 8, 2023 IEP team meeting;
f. Failing to implement the new goals and behavior intervention plan offered at the May 8, 2023 manifestation determination review meeting;
g. Post-dating Student's IEP goal progress updates at the October 5, 2023 IEP team meeting;
h. Unilaterally terminating the October 5, 2023 IEP team meeting;
i. Failing to inform Parent that Student could be eligible for an IEP until the age of 22 if he earned a certificate of completion
j. Placing Student on diploma track;
k. Teachers failing to answer Parent's and Parent's representative's questions at the December 8, 2023 IEP team meeting related to the IEP, Student's needs, and availability of special education services in the school district;
l. Informing Parent at the December 8, 2023 IEP team meeting that Student could receive special education services after he earns a regular high school diploma;

m. Failing to timely file for due process to defend the 2021 psychoeducational assessment and functional behavior assessment following Student's requests for individual educational evaluation on August 25, 2023;
n. Predetermining the December 8, 2023 IEP offer; and
o. Failing to consider Dr. Pratt's independent psychological assessment findings and recommendations when making the December 8, 2023 IEP offer?

DISTRICT'S ISSUES

1. Did Sequoia Union conduct a legally complaint psychoeducational assessment reported at the October 13, 2021, IEP team meeting, such that Student is not entitled to an independent educational evaluation at public expense?
2. Does Sequoia Union's December 8, 2023 IEP offer constitute FAPE such that it can be implemented without parental consent?
3. May Sequoia Union conduct a functional behavior assessment and educationally related mental health services assessment without parental consent based on the May 2023 and October 4, 2023 assessment plans, respectively?

PROPOSED RESOLUTIONS

The resolutions requested by Student include independent educational evaluations, reimbursement, develop a new IEP based on assessment recommendations, compensatory education, training for district staff, documents expunged from or added to Student's education record, and an independent investigation of district.

The resolutions requested by Sequoia Union include a decision declaring that the psychoeducational assessment is legally complaint, the December 8, 2023 IEP is FAPE, and that it may conduct a functional behavior and educationally related mental health services assessment without Parent's consent.

Sequoia Union filed its response to Student's amended complaint on January 31, 2024. (*M.C. v. Antelope Valley Union High School Dist.* (9th Cir. 2017) 858 F.3d 1189, 1199-1200.)

EXHIBITS

The parties shall serve their exhibits on each other in compliance with Education Code section 56505, subdivision I(7). The parties shall upload their exhibits electronically according to the Order Setting Procedures for Filing Exhibits Electronically. Timely uploading electronic hearing exhibits five business days before the first day of hearing constitutes that party's timely exchange of evidence in compliance with Education Code section 56505, subdivision I(7). If further assistance is needed, please contact OAH at OAHSEOps@dgs.ca.gov.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not timely exchanged as required by Education Code section 56505, subdivision I(7) shall not be admitted into evidence at the hearing unless the ALJ rules that it is admissible.

IDENTIFYING EXHIBITS AND PAGE NUMBERS

Each exhibit must be identified by a letter and number. Student must use the letter S before the number to identify Student's exhibits. Sequoia Union must use the letter D before the number to identify Sequoia Union's exhibits. For example, S-1 means

Student's exhibit 1 and D-1 means Sequoia Union's exhibit 1. A cover sheet with this identifying letter and number should be the first page of each exhibit. The electronic evidence program will automatically number the exhibits and additional page numbering or bates stamping should not be added.

The parties shall upload exhibits in the same order as in the expedited matter. The parties may add new exhibits in the this matter and number them as next in order.

CONTENT

Each exhibit must consist of one document. Separate documents may not be combined into one exhibit. Emails or letters may be consolidated into one exhibit if they are part of a single chain of messages. Exhibits should be in chronological order.

Parties should include resumes or curriculum vitae for each witness expected to testify as an expert.

Sequoia Union exhibits must include a copy of the school calendar for each school year in question.

Electronic copies of exhibits filed with OAH shall be filed by 5:00 PM at least five business days before the first day of hearing. Please refer to the General Order OAH issued with the Scheduling Order that contains the Order Setting Procedures for Filing Exhibits Electronically. It includes instructions for how to file exhibits electronically. Beginning three business days before the hearing, the electronic evidence system will not allow parties to upload exhibits unless permitted by the ALJ during the hearing at the ALJ's discretion.

WITNESSES

The parties shall serve their list of witnesses on each other in compliance with Education Code section 56505. No party shall be permitted to call any witnesses not timely disclosed except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

Parties are responsible for ensuring that all participants are familiar with and follow the Instructions for Joining the Online Due Process Hearing provided with this Order. Participants who have not previously used the Zoom application, may find informative instructions on at by visiting, Getting Started with Zoom at https://support.zoom.us/hc/en-us/categories/200101697.

The parties are responsible for ensuring that witnesses join the virtual hearing room at the designated date and time to testify. Witnesses are required to join the due process hearing by computer and appear by videoconference unless they do not have the necessary computer equipment. If a witness does not have the necessary equipment, the ALJ may permit the witnesses to appear by audio only or by telephone. "Audio only" means using a computer without video. A witness's inability to attend the hearing by videoconference will be discussed at the start of the hearing.

The parties are responsible for producing their own witnesses unless otherwise ordered by the ALJ. Parties shall make witnesses under their control reasonably available. The parties must schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses out of order.

The ALJ has discretion to limit the number of witnesses and the time allowed for testimony. Education Code, section 56505.1, subdivision (h), empowers the ALJ to set a reasonable limit on the length of the hearing after consideration of four factors. The

first two factors are the issues to be heard and the complexity of facts to be proven. The second two factors are the ability of the parties or their representatives to present their respective cases and the parties' estimates of the time needed to present their cases.

MEET AND CONFER

The parties are encouraged to review and shorten their witness and exhibit lists before the hearing. Evidence may be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear.

The parties are ordered to meet and confer no later than February 23, 2024, at 5:00 PM to discuss scheduling witnesses and how much time each witness will take. The parties shall discuss any issues related to counsel and witnesses appearing by videoconference for hearing, electronically viewing exhibits during the hearing, and subpoenas, if any. The parties should attempt to eliminate duplicate exhibits from their hearing exhibits. The parties shall discuss whether they can produce a written stipulation as to pertinent facts, contentions, resolutions and the authenticity and admissibility of documents to shorten the length of time needed for the hearing.

As part of the meet and confer process, Sequoia Union shall inform Student which proposed witnesses are District employees. Sequoia Union shall also identify the witnesses on Student's list that require a subpoena. Sequoia Union may agree to accept service for a witness under Sequoia Union's control or provide Student with the witness's most recent contact information.

PARTICIPANT INFORMATION FORM

Both parties have an ongoing obligation to ensure that OAH has current information on the Participant Information Form filed with OAH and shall file an updated Form as necessary. The Participant Information Form is not served upon the

opposing party. The ongoing obligation to ensure that the Participant Information Form filed with OAH is current does not change the parties' statutory obligation to timely disclose their witnesses to the other party(s) at least five business days prior to hearing. The parties must file an updated Participant Information Form to inform OAH of any changes, additions, or deletions, including the required information no later than 5:00 PM at least two business days before the first day of hearing.

Any contact information provided shall be used for the limited purpose of issuing subpoenas or for contacting a witness to attend the hearing. Any contact information shall not be disclosed to any other person.

EVIDENCE PRESENTATION

In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 62.) In this consolidated matter, Student's case-in-chief shall be presented first, followed by Sequoia Union, unless otherwise ordered.

WITNESS LISTS

The parties must provide a joint proposed witness list to the ALJ on the first day of hearing. The list should include the first and last name of the witness, which party is calling the witness to testify, and include dates and time estimates of each witness's expected testimony. In the event an agreement cannot be reached, each party shall prepare a separate written list. Sequoia Union must have witnesses available in case there is no agreement.

At the beginning of the hearing, the ALJ and the parties will discuss the length of time anticipated for each witness and scheduling issues for individual witnesses. The

ALJ will finalize the witness schedule. Parties must be prepared at the end of each day to discuss the witnesses to be presented the next day and the estimated time for the testimony of each witness.

SCOPE OF WITNESS EXAMINATION

Each witness will be called to testify only once, except for rebuttal purposes. All parties must examine a witness on all issues when the witness is first called to testify. Requiring a witness to appear only once takes priority over the order in which parties present their case-in-chief.

AUDIO ONLY OR TELEPHONIC TESTIMONY

Whether a witness may appear by audio only or telephone instead of videoconference is a matter within the discretion of the ALJ. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) Any party seeking to present a witness by audio only or telephone shall request permission to do so before the hearing. Any party seeking to present a witness who cannot access exhibits electronically must inform the ALJ at the beginning of the hearing.

ELECTRONIC RECORDINGS

AUDIO RECORDING

A party may request permission to make an audio recording of the hearing. Permission to make an audio recording is subject to the ALJ's discretion and based upon the following conditions:

1. the OAH recording is the only official recording;

2. the parties shall turn their recording device on and off at the same time that the ALJ is on and off the record to avoid recording conversations while off the record;
3. operation of the party's recording mechanism will not be allowed to delay the hearing;
4. a party's recording may not be given, provided or played to a witness, or potential witness;
5. the recording is subject to the same confidentiality as the due process hearing; and
6. participants shall not take screenshots of the videoconference nor share or publish any portion of the videoconference or audio recording.

Student's and District's requests to make an audio recording of the hearing is granted.

VIDEO RECORDING

No party, witness or anyone else may videorecord any part of the proceedings or stream live through any means.

RECORDINGS AS EXHIBITS

The parties have permission to upload recordings in this matter. The ALJ has discretion to admit or exclude evidence in the form of a recording. The party offering the recording must establish that all or a part of the recording is relevant. The ALJ may request a transcript of the portion of the recording requested or have the party offering the recording to provide an exact identifiable portion of the recording the party seeks to admit. The identities of any person speaking on the portion of the tape being

introduced must be established. An ALJ may allow the opposing party to offer additional portions of a recording to establish the context, or to rebut, the recording.

COMPENSATORY EDUCATION OR REIMBURSEMENT

Any party seeking reimbursement for expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of the expenditures. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education. Documents offered as evidence to support a request for reimbursement must be separated by vendor.

MOTIONS

STUDENT'S MOTION TO DISMISS

On January 31, 2024, Student filed a motion to dismiss claiming that the statute of limitations bars Sequoia Union from seeking to defend its psychological assessment dated October 12, 2021. Student claimed that Sequoia Union failed to allege an exception to the two-year statute of limitation and filed its request greater than two years from the date the assessment was presented at an IEP team meeting on October 13, 2021. On February 5, 2024, Sequoia Union filed an opposition. Sequoia Union argued that Student did not request an independent educational evaluation until August 25, 2023, which triggered its duty to fund the requested evaluation or file to defend the assessment.

The statute of limitations in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)I.) However, title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l),

establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

Here, Sequoia Union's obligation and right to file to defend its psychoeducational evaluation did not occur until Student requested an independent educational evaluation on August 25, 2023. Accordingly, Sequoia Union filed its complaint before the expiration of the statute of limitations. The question of whether Sequoia Union filed without unnecessary delay is at issue in this hearing. This ruling has no bearing on that question. Student's motion to dismiss is denied.

SEQUOIA UNION'S MOTION TO DISMISS

On January 29, 2024, Sequoia Union filed a motion to dismiss several allegations in Student's complaint based on four reasons. First, Sequoia Union objected to an issue that was litigated in the expedited hearing. At the PHC, Student did not include the issue that was previously litigated. Sequoia Union's motion to dismiss the issue previously litigated is denied as moot. Second, Sequoia Union moved to dismiss claims outside of the statute of limitations. Based on the discussion at PHC, Student did not raise any issues prior to the statutory period. Sequoia Union's motion to dismiss based on the statute of limitations is denied as moot.

The third basis Sequoia Union requested dismissal was for issues outside of OAH's jurisdiction. At the PHC, Student conceded issue four in his PHC statement related to a hostile learning environment was alleged to exhaust administrative remedies. Issue four was dismissed as outside of OAH's jurisdiction. Student's issue 21

in his PHC statement raised a claim related to disclosure of documents governed by Family Educational Rights and Privacy Act, a statutory scheme outside of OAH's jurisdiction. As a result, Student's issue 21 in his PHC statement was dismissed.

Lastly, Sequoia Union moved to dismiss Student's requests for remedies outside of OAH jurisdiction and authority. Sequoia Union's motion to dismiss on this basis was denied without prejudice. Sequoia Union object to Student's requested remedies in its closing argument.

PENDING MOTIONS TO QUASH

Sequoia Union filed a motion to quash Student's subpoenas duces tecum on February 2, 2024. Student filed a motion to quash District's subpoenas duces tecum on February 5, 2024. Based on the parties request to continue the matter as discussed above, the parties may file their responses to each motion to quash by February 20, 2024. The parties may delay filing their responses to the pending motions to avoid each party incurring additional litigation costs while they investigate and develop a plan to effectuate the terms of the settlement agreement.

No other prehearing motions are pending or contemplated. Any motion that was not filed three business days before the PHC, shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not timely filed.

STIPULATIONS

Stipulations to pertinent facts, contentions, resolutions and authenticity and admissibility of documents are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in writing prior to the start of the hearing.

CONDUCT OF PARTICIPANTS AND HEARING ROOM DECORUM

All participants to the videoconference should observe the same decorum as in an in-person due process hearing. Participants must conduct themselves in a professional and courteous manner at all times. Cellular phones, telephones and computer notifications must be shut off or set to silent during the hearing unless the ALJ grants permission otherwise. Participants should appear from a private location, unless otherwise ordered. Participants should take reasonable efforts to minimize background noise and maintain adequate room lighting. Use of virtual background images are at the discretion of the ALJ. Witnesses are prohibited from reading exhibits, documents, notes, text messages, telephones or computers while testifying, unless permitted to do so by the ALJ. The parties, their representative and witnesses are prohibited from passing notes to, exchanging electronic messages with, or signaling the witness in any way while the witness is testifying.

LANGUAGE INTERPRETERS AND REASONABLE ACCOMMODATIONS

Neither party requested an accommodation or interpreter.

A party or participant in this case, such as a witness, requiring reasonable accommodation to participate in a mediation or hearing may contact OAH at (916) 263-0880, or send an email to OAHADA@dgs.ca.gov as soon as the need is known. The e-mail should have "Request for Accommodation" in the Subject Line. Additional information concerning requests for reasonable accommodation is available on OAH's website at: https://www.dgs.ca.gov/OAH/Services/Page-Content/Office-of-Administrative-Hearings-Services-List-Folder/Request-Reasonable-Accommodations-for-OAH-Legal-Proceedings.

HEARING OPEN TO THE PUBLIC

The hearing is open to the public. Special education hearings are closed to the public unless a student requests the hearing to be open to the public.

An ALJ may restrict attendance because of the physical limitations of the hearing facility or take other action to promote due process or the orderly conduct of the hearing. (Cal. Code Regs., Tit. 1, § 1030.) Government Code, section 11425.20 empowers the ALJ to order an open hearing to be closed or make other protective orders to the extent necessary or proper to ensure a fair hearing in the circumstances of the case.

By choosing an open hearing, Student is on notice that highly sensitive personal information will be seen and heard by observers.

The following Order applies to observers:

1. Microphone and video shall be off at all times, unless otherwise ordered by the ALJ.

2. Hearing observers will not be allowed to record, photograph, or broadcast the hearing. (California Rules of Court, rule 1.150.) Any person who suspects a member of the public violating this rule, must immediately report the violation to the ALJ.

3. An ALJ may exclude persons whose actions impede the orderly conduct of the hearing, restrict attendance because of the physical limitations of the hearing facility, or take other action to promote due process or the orderly conduct of the hearing. (Cal. Code Regs., Tit. 1, § 1030, subd. (e).) Further, an ALJ may order an open hearing to be closed or make other protective orders

to the extent necessary or proper to ensure a fair hearing in the circumstances of the case, including to protect a minor witness or a witness with a developmental disability. (Gov. Code § 11425.20, subd. (a).)

SETTLEMENT

The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached 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. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH by visiting OAH Secure e-file at https://www.applications.dgs.ca.gov/oah/oahsftweb.

If a full and final written settlement agreement is reached after 4:00 PM the day prior to 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.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed 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

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the prehearing conference. Any discussion and conversation not referenced in this Order is not binding on the ALJ conducting the hearing and may not be relied upon by the parties. The parties should be aware that, at hearing, the ALJ conducting the hearing has discretion to reconsider any part of this Order.

IT IS SO ORDERED.

Marlo Nisperos

Marlo Nisperos
Administrative Law Judge
Office of Administrative Hearings