BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

ENTERPRISE ELEMENTARY SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NUMBER 2021020664

ORDER FOLLOWING PREHEARING CONFERENCE GRANTING CONTINUANCE AND SETTING TIME FOR RESPONSE TO MOTION TO AMEND

MARCH 16, 2021

On March 15, 2021, Administrative Law Judge Claire Yazigi, 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.

Kyle Raney, Attorney at Law, appeared on behalf of Enterprise Elementary School District. Parent appeared on behalf of Student. Tania Whiteleather, Attorney at Law, also attended the PHC at Parent's request. Whiteleather expected to file a notice of representation identifying her as the attorney of record for Parent on behalf of Student

upon conclusion of the PHC. OAH received Whiteleather's notice of representation that afternoon. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

At PHC, the parties jointly requested that mediation be set in this matter for April 2, 2021. The motion was not filed three days before PHC. Parent was in the process of obtaining legal representation during the time that Enterprise sought to make a timely mediation request. Further, Student's address of record with OAH was incorrect up until one business day before PHC. Parent had not received service of the most recent Order Following Prehearing Conference dated March 9, 2021. Parent and Whiteleather appeared at PHC only after being contacted by the undersigned during the PHC. Given these circumstances, the parties were unable to make a timely joint mediation 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 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).)

Good cause exists to grant the parties' request for mediation. All previously scheduled dates are vacated. The case shall proceed as follows:

Mediation: April 2, 2021, from 9:00 am to 4:30 pm.

Prehearing Conference: April 16, 2021 at 10:00 am.

All other prehearing matters shall be addressed at the April 16, 2021 PHC. All prehearing motions must be filed three business days before the PHC.

Due Process Hearing: April 27, 28, and 29, 2021.

The hearing shall begin at 9:30 am on all days unless otherwise ordered. The hearing shall continue day to day at the discretion of the ALJ.

HEARING LOCATION

OAH is authorized to conduct due process hearings by videoconference or telephone. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) Based on state and federal guidance to address safety procedures due to the novel coronavirus, COVID-19, OAH will conduct the due process hearing by videoconference using the Microsoft Teams application. Unless otherwise ordered, participants are required to appear by videoconference using a webcam and Microsoft Teams.

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.

ENTERPRISE'S MOTION TO AMEND

On March 10, 2021, Enterprise filed a motion to amend its due process hearing request and an amended complaint. Enterprise's motion was timely filed more than five days prior to due process hearing and three business days before PHC. District served its motion at Student's correct address. At PHC, Student requested an additional three business days to respond to Enterprise's motion to amend, given Whiteleather's recent involvement as legal counsel. This way, Student's attorney would have an opportunity to review and respond to Enterprise's motion on behalf of Student. This request was granted over Enterprise's objection. Enterprise's motion to amend is taken under submission. Student will have until 5:00 pm on March 18, 2021 to file any response to Enterprise's motion to amend.

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 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.

Claire Yazigi
Claire Yazigi (Mar 16, 2021 10:15 PDT)

Claire Yazigi
Administrative Law Judge
Office of Administrative Hearings