BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024100512

# ORDER FOLLOWING PREHEARING CONFERENCE GRANTING SECOND REQUEST FOR CONTINUANCE

JANUARY 10, 2025

On January 10, 2025, Administrative Law Judge Cararea Lucier, Office of Administrative Hearings, held a video 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, supported by Ann Ware. Diandra Vantrease, Attorney at Law, appeared on behalf of Fresno Unified School District, referred to as Fresno. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

## HEARING DATES, TIMES, AND LOCATION

On January 2, 2025, Student filed with OAH a motion to continue. Student failed to include a completed proof of service. Fresno did not receive a copy of the motion until January 9, 2025. At the PHC, Fresno did not oppose Student's motion for a second continuance, but was not available on Student's preferred dates of February 4 and 5, 2025. The earliest date Fresno was available was February 25, 26, and 27, 2025.

Student moved to continue the due process hearing for a second time so the parties could participate in an individualized education program, called IEP, team meeting. After the November 22, 2024 PHC the parties participated in a mediation with OAH. Subsequently, Parent obtained a private evaluation which the parties intend to discuss at an IEP team meeting. Both parties would like the opportunity to review the new evaluation at an IEP team meeting prior to a due process hearing in this matter and believe this may help the parties resolve the dispute.

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. Both parties believe it would be helpful to review the new private evaluation at an IEP team meeting prior to participating in a due process hearing. All previously scheduled dates are vacated. The case shall proceed as follows:

PREHEARING CONFERENCE will be held on February 14, 2025, at 1:00 PM.

All other prehearing matters shall be addressed at the February 14, 2025 PHC. All prehearing motions must be filed three business days before the PHC.

DUE PROCESS HEARING will be held February 25, 2025, through February 27, 2025.

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.

## FAILURE TO COMPLY

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

## ORDER INCLUDES ALL RULINGS

This order contains all rulings made at the PHC.

## IT IS SO ORDERED.

*Cararea Lucier*

Cararea Lucier
Administrative Law Judge
Office of Administrative Hearings