BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023090342

ORDER FOLLOWING PREHEARING CONFERENCE AND CONTINUING HEARING BY VIDEOCONFERENCE

OCTOBER 23, 2023

On October 20, 2023, Administrative Law Judge Alexa Hohensee, 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.

Parent appeared on behalf of Student. Attorney Kendra Tovey appeared on behalf of Los Angeles Unified School District, called Los Angeles. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

CONTINUANCE OF DUE PROCESS HEARING

During the PHC, Student objected that an order that Los Angeles file a copy of its response to the complaint on October 23, 2023, the day before the exchange of evidence and witnesses was due for a hearing beginning October 31, 2023, was prejudicial to Student and requested a continuance of the hearing. In addition, Student wanted additional time to review any changes made by the ALJ to the issues at the PHC, and to file prehearing motions as Student deems appropriate. Los Angeles did not oppose the continuance and the parties agreed to continuance dates.

OAH must conduct a due process hearing and issue a decision within 45 days of receiving the due process complaint, unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Resolving the due process hearing quickly is legally required. Hearings may only be continued if good cause is established. (Ed. Code, § 56505, subd. (f)(3).) OAH is guided by the Administrative Procedure Act and the California Rules of Court when ruling on continuance motions. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.)

Good cause to continue a hearing may include:

- An essential lay or expert witness is unavailable because of death, illness, or other excusable circumstances;
- A party is unavailable because of death, illness, or other excusable circumstances;
- A party's attorney is unavailable because of death, illness, or other excusable circumstances;

- A new attorney substitutes in, but only if the party establishes that the substitution is required in the interests of justice;
- A new party is added, and the new party has not had a reasonable opportunity to prepare for trial, or other parties have not had a reasonable opportunity to prepare for trial regarding the new party's involvement;
- A party is unable to obtain essential testimony, documents, or other material evidence despite diligent efforts; or
- The case has a significant and unexpected change which makes the case not ready for trial.

Generally, continuances are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

Student established good cause to continue the due process hearing. Student requires additional time to review and perhaps amend Student's evidence and witness list in light of Los Angeles's as yet unfiled response to the complaint. Student is also concerned that the restatement of the issues by the ALJ may be a substantive change to Student's claims and requests additional time to review the issues and decide if Student wants to object to the restatement or amend Student's due process complaint. Both of these may be significant and unexpected changes which make the case not ready for hearing, and Student requests time to review both and decide how Student wants to proceed.

The request is granted. All previously scheduled dates are vacated. The new dates are:

PREHEARING CONFERENCE will be held on December 1, 2023, at 3:00 PM.

DUE PROCESS HEARING will be held on December 12 through 14, 2023.

The mediation, prehearing conference, and due process hearing will be held by videoconference or telephone, unless otherwise ordered. The due process hearing will begin at 9:30 AM on all days, and generally end at 3:30 PM, unless otherwise ordered. The hearing will continue day to day, as needed, Mondays and Fridays included, at the discretion of the Administrative Law Judge. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference. Late motions will only be considered if good cause is established for the late filing.

The parties must immediately give potential witnesses the hearing dates, and must subpoena witnesses, if necessary, so they are available to testify. Failing to properly notify or subpoena a witness is not good cause to delay the hearing.

ISSUES AND PROPOSED RESOLUTIONS

The issues at the due process hearing, and proposed resolutions, as alleged in the complaint and clarified by the parties and the ALJ during the PHC are stated below. A free appropriate public education is called a FAPE. An individualized education program is called an IEP.

ISSUES

1. Did Los Angeles deny Student a FAPE from September 17, 2021 through October 26, 2021, by denying Student access to his teacher through distance learning in violation of Los Angeles's stay put obligations?
2. Did Los Angeles deny Student a FAPE from September 27, 2021 through October 26, 2021, by unilaterally disenrolling Student in violation of Los Angeles's stay put obligation?

During the discussion of the issues on the record, Parent contended that Student did not allege a FAPE violation, and Student did not want his issues "tied to" a FAPE. However, Student's complaint clearly alleges that Student lost educational opportunity because Los Angeles denied Student access to his teacher through distance learning, and by unilaterally disenrolling Student in September and October 2021. Those are both claims of a denial of a FAPE.

During discussion of the issues at the PHC, Parent repeatedly referenced a prehearing order, called a stay put order, issued in a prior due process matter by Student against Los Angeles. That case alleged the same denials of FAPE as the instant case but was dismissed by Parent prior to hearing after a stay put order was issued on October 14, 2021. Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505, subd. (d).) This is referred to as stay put. An interim order in another case, the equivalent of a preliminary injunction, has no relevance to Student's claims in the current matter.

On inquiry by the ALJ, Parent denied that Student was attempting to enforce a stay put order issued over two years ago in another case. In addition, Student's complaint acknowledges that Student returned to in-person instruction in December 2021, and the October 14, 2021 stay put order in that case for continued online instruction pending the hearing in that case was rendered moot.

Parent contended, without any legal authority, that the old stay put order would entitle Student to judgement in this matter if Student's issues were worded as a violation of Los Angeles's stay put duty . However, a stay put order is not an adjudication on the merits and has no final effect. Although a final judgment on the

merits of an action precludes the parties or their agents from relitigating issues raised in that action (see *Allen v. McCurry* (1980) 449 U.S. 90, 94 [101 S.Ct. 411, 66 L.Ed.2d 308]), a stay put order is not a final judgment and would have no bearing on the issues in this case. More to the point, Student dismissed his prior case without going to hearing, and did not obtain a judgment in Student's favor.

Parent asserted Student would seek summary judgment on Student's issues based on the stay put order in the other case. OAH does not decide due process matters by summary judgment. And again, an interim order does not have the effect of a final decision on the merits.

Lastly, Parent stressed that this action was brought only to exhaust administrative remedies under the IDEA prior to filing suit under other federal statutes in District Court, and invited Los Angeles to file a motion to dismiss Student's complaint as failing to allege a claim within OAH jurisdiction. Parent appears to confuse the dismissal of non-IDEA claims outside of OAH's jurisdiction with dismissal of an IDEA claim for failure to state a claim in compliance with IDEA requirements. (See *Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [OAH jurisdiction is limited to the IDEA].)

In any event, Student's complaint does state a claim under the IDEA and California special education law. Student's complaint contains a description of the nature of the problems relating to changes to Student's educational placement, facts relating to the problems, and proposed resolutions of the problems. (20 U.S.C. § 1415(b)(7)(a); Ed. Code, § 56502, subd. (c).) The issues expressly allege that Los Angeles acted in violation of its stay put obligation. The issues have been stated in this Order in conformance with Student's complaint without substantive change.

The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist*. (9th Cir. 2010) 626 F.3d 431, 442-443.) Parent's argument that Student's issues should be worded in such a way as to further Parent's unfounded intention to avoid a substantive hearing by requesting judgment on an interim order in a case that did not go to a hearing, or to file in District Court on Student's claims without having exhausted administrative remedies under the IDEA, is not in the best interests of the child. It also is not in conformity with due process under the IDEA and California law.

A party must immediately file a written objection with OAH if the issues as described above do not reflect the party's understanding of the issues as clarified at the PHC. All other prehearing matters will be discussed at the December 1, 2023 PHC.

OAH has not received a copy of Los Angeles's response to Student's complaint. Los Angeles must file its response to Student's complaint no later than September 23, 2023. (*M.C. v. Antelope Valley Union High School Dist.* (9th Cir. 2017) 858 F.3d 1189, 1199-1200.)

SETTLEMENT

The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties must 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 must 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 must 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 must 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.

Alexa Hohensee

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings