BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGUITO UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2022060225

ORDER GRANTING STUDENT'S REQUEST FOR CONTINUANCE AND RECONSIDERATION AND DENYING DISTRICT'S MOTION FOR IN-PERSON HEARING

SEPTEMBER 27, 2022

On September 23, 2022, Student filed with the Office of Administrative Hearings, referred to as OAH, a request to reconsider the Order issued after the Prehearing Conference, referred to as a PHC, to correct Issue #4 and to go dark on October 5, 2022, due to Student's and Parents' religious observance. San Dieguito Union did not oppose the request to go dark but objected to OAH's jurisdiction over Issue #4 of the PHC Order.

On September 21, 2022, San Dieguito Union filed a motion for an in-person hearing. Student filed an opposition.

On September 26, 2022, Student filed a motion to continue this matter based upon Student's counsel's medical necessity. The time for San Dieguito to file an opposition has not elapsed.

REQUEST FOR RECONSIDERATION

In Student's Amended PHC statement, filed with OAH on September 19, 2022, Student listed Issue #4 as: "Did the District Subject Student to discrimination, thus denying him a FAPE?" When the PHC Order was issued, Issue #4 read: "Did deny Parents their participation rights by failing to timely subject Student to discrimination, thus denying him a FAPE?"

San Dieguito objects OAH rewording Issue #4 because OAH does not have jurisdiction over alleged discrimination claims. However, the PHC Order states as follows: "Issue number 4 is limited to discrimination resulting in a FAPE violation, and does not encompass any claims outside of the IDEA, such as claims pursuant to Section 504, the Americans with Disabilities Act, and/or the California or United States constitutions. (*M.C. v. Antelope Valley Union High Sch. Dist.* (9th Cir. 2017) 858 F.3d 1189.)."

Student's request for modification of Issue #4 is granted, subject to the expressed limitation by ALJ Mann in his September 19, 2022 PHC Order. Issue #4 will now read: "Did San Dieguito subject Student to discrimination, thus denying him a FAPE under the IDEA?" This modification is without prejudice to San Dieguito renewing a motion to dismiss Issue #4 if the facts elucidated at the hearing do not support that OAH has jurisdiction over the issue.

Student also requested that the hearing on October 4, 2022 end by 3:30 PM and that the hearing "go dark" on October 5, 2022, due to Student and Parents' observance of the Yom Kippur holiday. San Dieguito does not object. Student's request is granted.

MOTION FOR IN-PERSON HEARING

San Dieguito filed a motion that OAH proceed with an in-person hearing rather than a virtual hearing. Student opposed the motion.

San Dieguito argues that the original basis for virtual hearings, the Covid pandemic, has subsided. San Dieguito also argues that virtual hearings are fraught with technical issues and make it difficult to judge the credibility of witnesses and parties. Student argues that the parties are equally subject to the technical difficulties involved in virtual hearings and that both Parents are working professionals and cannot take their full time off for the hearing dates at the last moment. More significantly, one parent is immunocompromised and wishes to avoid all in-person meetings if possible.

OAH is authorized to conduct due process hearings by videoconference or telephone. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) Per OAH's standing orders, unless otherwise ordered, participants are required to appear by videoconference using a webcam and Microsoft Teams or Zoom.

In this matter, San Dieguito has not shown good cause as to why this hearing should be held in person, and Student has shown good cause to hold this hearing virtually. San Dieguito's motion for an in-person hearing is denied.

MOTION 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).) 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).)

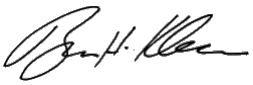
Student's counsel has filed a motion to continue based upon a scheduled medical appointment on October 4, 2022, that occurred after the PHC was held. Student's counsel indicates that she may not get another appointment for 30 to 45 days and that the appointment has medical exigency. Student requests the hearing be continued to October 11, 2022.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. Student's counsel's medical need establishes good cause. Although San Dieguito has not had the opportunity to respond, the request is partially granted due to the proximity of the hearing. The hearing dates of October 4 and 5, 2022 are

vacated. The hearing will commence on Thursday, October 6, 2022. The hearing shall begin at 9:30 AM and end at 3:30 PM on all days unless otherwise ordered. The hearing shall continue daily, as needed, at the discretion of the Administrative Law Judge.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure their availability to testify. Good cause for witness unavailability is not established by failing to properly notify or subpoena a witness.

IT IS SO ORDERED.



Brian H. Krikorian
Administrative Law Judge
Office of Administrative Hearings