BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT,

PHASE 2 – REMEDIES

OAH CASE NUMBER 2023050849

ORDER FOLLOWING PREHEARING CONFERENCE

CONTINUING PREHEARING CONFERENCE AND DUE PROCESS HEARING

FEBRUARY 23, 2024

On February 23, 2024, Administrative Law Judge Robert G. Martin, 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.

Attorney Tania Whiteleather appeared on behalf of Student. Attorney Karen Gilyard appeared on behalf of San Bernardino City Unified School District, referred to as

San Bernardino. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

PHASE 2 HEARING DATES, TIMES, AND LOCATION

On January 31, 2024, Student filed a timely motion to continue the due process hearing based on the unavailability of Impartial Assessor Ann Simun, PsyD., on the scheduled hearing dates of March 5 and 6, 2024. San Bernardino opposed Student's motion on grounds Student did not show good cause why Dr. Simun was unavailable on March 5 and 6, 2024, and on grounds Student's motion sought a continuance to hearing dates the week of March 11 through 15, 2024, when OAH specified that no due process hearings or prehearing conferences shall be scheduled due to the training of administrative law judges. San Bernardino also opposed the continuance on grounds that its attorney was unavailable in following weeks due to conflicting hearing dates in cases filed with OAH after this case, and on grounds of San Bernardino's right to a timely due process hearing. Student subsequently filed a supporting declaration explaining Dr. Simun was traveling to a conference on March 5, 2024, and preparing on March 6, 2024 for a presentation she would give at the conference on March 7, 2024.

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. Independent Assessor Simun is a critical witness for this phase of the hearing, and Student has reasonably established the need for a continuance to obtain her testimony. The ongoing hearing dates in this case take precedence over hearing dates in later-filed matters. As this hearing concerns remedies for liability accruing to San Bernardino up to the filing of Student's complaint on May 23, 2023, San Bernardino did not demonstrate it would be prejudiced by a two-week continuance at this time.

All previously scheduled dates are vacated. The case shall proceed as follows:

PREHEARING CONFERENCE will be held on March 8, 2024, at 3:00 PM.

All pending motions and other prehearing matters shall be addressed at the March 8, 2024 prehearing conference. The parties may, but are not required to, file amended prehearing conference statements no later than three business days before the PHC.

DUE PROCESS HEARING: March 20, and 21, 2024.

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.

IT IS SO ORDERED.



Robert G. Martin
Administrative Law Judge
Office of Administrative Hearings