

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

VENTURA UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2021120575

ORDER FOLLOWING PREHEARING CONFERENCE FOR
HEARING BY VIDEOCONFERENCE AND GRANTING
CONTINUANCE

JANUARY 3, 2022

On January 3, 2022, Administrative Law Judge June R. Lehrman, 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.

Melissa Hatch and Katherine Grant, Attorneys at Law, appeared on behalf of Ventura Unified School District. Phillip Van Allsburg, Attorney at Law, made a special appearance on behalf of Student and represented that Parents were in the process of

retaining his office to represent Student in this matter. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

CORRECTED PROOF OF SERVICE

The proof of service filed with Ventura's complaint in this matter indicated that Parents were served by email only. Ms. Hatch on Ventura's behalf represented that the proof of service contained a typographical error because Parents had in fact been served by U.S. Mail, as well as by email. Ventura is ordered to file a corrected proof of service by close of business tomorrow, January 4, 2022.

REQUEST FOR CONTINUANCE

At the PHC, Mr. Van Allsburg on behalf of Student made a continuance request to enable the family to retain his office and prepare a defense. Ventura opposed the request, emphasizing the need for speedy resolution of this matter.

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 motion for continuance is granted for good cause. The previously scheduled hearing dates are hereby vacated. The new dates are:

PREHEARING CONFERENCE will be held on February 4, 2022 at 3:00 PM.

PARTICIPANT INFORMATION SHEETS FOR PREHEARING CONFERENCES MUST BE FILED TWO BUSINESS DAYS PRIOR TO THE DATE OF THE SCHEDULED EVENT.

Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference or with a showing of good cause why the document was not timely filed.

HEARING will be held on February 15, 16 and 17, 2022.

After the scheduled dates, the hearing will continue day to day at the discretion of the ALJ. The hearing shall begin at 9:30 AM each day and generally end at 3:30 PM, unless otherwise ordered.

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>.

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

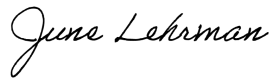
The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

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.

A handwritten signature in cursive script that reads "June Lehrman".

June Lehrman

Administrative Law Judge

Office of Administrative Hearings