

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

V.

SAN MARCOS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021120803

ORDER FOLLOWING PREHEARING CONFERENCE
GRANTING IN PART, AND DENYING IN PART, SAN
MARCOS UNIFIED SCHOOL DISTRICT'S REQUEST FOR
CONTINUANCE

MARCH 25, 2022

On March 21, 2022, Administrative Law Judge, Christine Arden, Office of Administrative Hearings, called OAH, held a videoconference prehearing conference. The Administrative Law Judge will be referred to as an ALJ. The prehearing conference will be referred to as a PHC.

Constance Zarkowski, and Sheila Bayne, Attorneys at Law, appeared on behalf of Student. Madisyn Ukrainetz, and Summer Dalassandro, Attorneys at Law, appeared on

behalf of San Marcos Unified School District. The PHC was recorded. Based upon papers filed with OAH and discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

DISTRICT'S MOTION TO CONTINUE

San Marcos Unified School District moved to continue the PHC and due process hearing on the grounds that at least four essential witnesses it intends to call to testify at hearing will be unavailable to testify due to such witnesses' travel plans outside of the country or the state during the current hearing dates of March 29 and 30, 2022. San Marcos Unified School District also sought a continuance of the hearing to May 10, 2022, due to its counsels' unavailability until that date because they are scheduled to appear at other OAH hearings.

The motion was timely filed three days prior to the PHC. Student did not file written opposition to the motion.

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 in part, and denied, in part. The continuance of the hearing is granted for two weeks, to April 12, 2022, through April 14, 2022, due to the unavailability of at least four essential witnesses who San Marcos Unified School District intends to call to testify at hearing. In fact, those four witnesses are on both parties' list of hearing witnesses. However, San Marcos Unified School District failed to provide good cause to justify the length of the requested continuance of the hearing to May 10, 2022. Counsel for San Marcos Unified School District cannot know if all the cases in their caseloads scheduled for hearing between now and May 10, 2022, will actually go to hearing on the presently scheduled hearing dates, since many cases settle and many hearing dates are continued. All previously scheduled dates are vacated. The case shall proceed as follows:

PHC: April 4, 2022, at 3:00 PM. OAH does not schedule PHC's at 10:00 AM on the first Monday of the month. THE PARTIES SHOULD TAKE NOTE OF THE CHANGE IN THE TIME TO 3:00 PM BECAUSE THE ALJ MISTAKENLY VERBALLY SET THE PHC FOR 10:00 AM AT THE MARCH 21, 2022 HEARING.

All other PHC matters shall be addressed at the April 4, 2022 PHC. Any further prehearing motions must be filed three business days before that PHC or with a showing of good cause why it was not timely filed.

Due Process Hearing: April 12, 2022, through April 14, 2022

The hearing shall be conducted via videoconference using the Microsoft Teams application, beginning at 9:30 AM, and ending about 3:30 PM, on each hearing day, unless otherwise ordered by the ALJ. The hearing shall continue day to day at the discretion of the ALJ.

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

ANY CHANGES TO THE PARTICIPANTS' EMAIL ADDRESSES PROVIDED BY THE PARTIES MUST BE FILED TWO BUSINESS DAYS BEFORE THE SCHEDULED EVENT.

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 at hearing. 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.

RULINGS ON ORDER TO SHOW CAUSE AND PREHEARING MOTIONS

At the time of March 21, 2022 PHC, the following proceedings/motions were pending: 1) Order to Show Cause why Student's complaint should not be dismissed for Student's failure to file an accurate PHC statement, and why OAH's costs incurred in connection with the March 14, 2022 PHC should not be shifted to Student; 2) San Marcos Unified School District's first motion to shift fees filed on March 15, 2022; 3) San

Marcos Unified School District's motion to dismiss Student's complaint with prejudice filed on March 16, 2022; and 4) San Marcos Unified School District's second motion to shift fees filed on March 16, 2022. These matters were argued by the parties at the March 21, 2022 PHC.

The Order to Show Cause and all of the above noted motions filed by San Marcos Unified School District will be addressed in a separate written Order.

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.

Christine Arden

Christine Arden

Administrative Law Judge

Office of Administrative Hearings