

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN JOSE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022020191

ORDER FOLLOWING PREHEARING CONFERENCE AND

CONTINUING PREHEARING CONFERENCE AND DUE

PROCESS HEARING

MARCH 22, 2022

On March 21, 2022, Administrative Law Judge Elsa H. Jones, Office of Administrative Hearings held a telephonic prehearing conference. The Administrative Law Judge will be referred to as an ALJ. The prehearing conference will be referred to as a PHC. Joshua Cruz, Attorney at Law, appeared on behalf of Student and Parents, collectively Student. Jeffrey Maisen, Attorney at Law, appeared on behalf of San Jose Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following Order:

HEARING DATES, TIMES, AND LOCATION

At the time of the PHC, the parties were close to finalizing a settlement, and San Jose Unified recently filed a complaint against Student and a motion to consolidate this action with its complaint. San Jose Unified's motion to consolidate was pending at the time of the PHC. The parties represented that the proposed settlement would encompass both cases. Therefore, at the PHC, the parties moved to continue the PHC and the due process hearing, so that they could finalize the proposed settlement and resolve both cases. As the potential settlement was only recently agreed to in principle, the parties were unable to file a motion to continue this matter three business days before the PHC, and the parties thereby established good cause for presenting their motion at the PHC.

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 by 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, to give the parties time to finalize their settlement and submit the required settlement documentation to OAH. All previously scheduled dates are vacated. The case shall proceed as follows:

PHC: March 25, 2022, at 3:00 PM.

All other prehearing matters shall be addressed at the March 25, 2022, PHC, including San Jose Unified's Motion to Consolidate. All additional prehearing motions must be filed three business days before the PHC.

Due Process Hearing: April 5 through April 7, 2022.

All hearing days shall begin at 9:30 AM, 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 was not properly notified of the hearing date or properly subpoenaed.

IT IS SO ORDERED.

A handwritten signature in cursive script that reads "Elsa Jones".

Elsa H. Jones

Administrative Law Judge

Office of Administrative Hearings