BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

PALO ALTO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023060486

ORDER FOLLOWING PREHEARING CONFERENCE

GRANTING REQUEST FOR CONTINUANCE

JULY 25, 2023

On July 24, 2023, 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. Mark Wojciechowski, Attorney at Law, appeared on behalf of Student. Dan Harbottle, Attorney at Law, appeared on behalf of Palo Alto Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

Palo Alto Unified School District timely filed a motion with OAH on July 19, 2023, requesting a continuance of the PHC and due process hearing to September 19 through 21, 2023, based on the unavailability of the following people to participate in the hearing on the currently scheduled dates of August 1, 2023, through August 3, 2023: its lead attorney in this case; its Special Education Director, who is its hearing representative; and five necessary witnesses. Palo Alto Unified School District also seeks a continuance of the hearing to allow time for it to observe Student while he attends Esther B. Clark School, called EBC, Student's requested nonpublic school placement, pursuant to Education Code section 56329(d).

Student opposed the motion on the grounds that Student would be prejudiced by a continuance because Parents are paying Student's tuition at EBC and seek reimbursement of those funds in this case. Student further contends that an attorney, other than Tracy Petznick Johnson, who is available to appear at hearing on August 1 through August 3, 2023, should represent Palo Alto Unified School District at the hearing. Student further argues that Education Code section 56329(d) is not applicable to this matter because there is no pending assessment of Student.

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. Student has demonstrated good cause for a short continuance. This is the first continuance requested in this case. The initial and currently scheduled hearing dates were assigned by OAH without input from the parties. The unavailability of Palo Alto Unified School District's lead attorney in this case, Tracy Petznick Johnson, as well as the unavailability of Cynthia Loleng-Perez, Palo Alto Unified School District's designated representative at hearing, and five necessary witnesses, constitute good cause for a short continuance of the hearing.

Palo Alto Unified School District's reliance on Education Code section 56329(d) is not a proper basis for a continuance because there is no pending assessment of Student. Palo Alto Unified School District has failed to demonstrate good cause to continue the hearing to September 19, 2023. Specifically, some of the hearings referenced in Palo Alto Unified School District's moving papers scheduled for the last half of August and the first half of September 2023 are for cases filed around the same time or after this case.

As reflected on the record, after discussion and the opportunity to meet and confer with their respective clients to attempt to agree upon continuance dates, the parties agreed to hearing dates of August 22 through 24, 2023. Accordingly, all previously scheduled dates are vacated. The case shall proceed as follows:

The Prehearing Conference will be held on August 14, 2023, at 3:00 PM.

All other PHC matters shall be addressed at the August 14, 2023 PHC. All prehearing motions must be filed at least three business days before that PHC. Late motions will only be considered if good cause is established for the late filing.

The Due Process Hearing will be held on August 22, 2023, through August 24, 2023. The hearing 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 PHC and due process hearing will be held by videoconference or telephone, unless otherwise ordered.

PARTICIPANT INFORMATION SHEETS FOR PREHEARING CONFERENCES AND DUE PROCESS HEARINGS MUST BE FILED TWO BUSINESS DAYS PRIOR TO THE DATE OF 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 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 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 board meeting at which the proposed agreement will be addressed by the board. 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