BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

BANTA UNIFIED SCHOOL DISTRICT, AND NEXT GENERATION STEAM ACADEMY.

OAH CASE NUMBER 2023090717

ORDER FOLLOWING PREHEARING CONFERENCE FOR HEARING BY VIDEOCONFERENCE, DENYING MOTION TO DISMISS, ORDERING PARTICIPATION IN RESOLUTION SESSION, AND CONTINUING PREHEARING CONFERENCE AND HEARING

OCTOBER 30, 2023

On October 30, 2023, Administrative Law Judge Christine Arden, 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.

Nicole Hodge Amey, Attorney at Law, appeared on behalf of Student. Kendra Tovey, Attorney at Law, appeared on behalf of Banta Unified School District, called Banta Unified, and Next Generation STEAM Academy, called NG Charter. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

RESPONDENTS' PENDING MOTION TO DISMISS

On October 23, 2023, Banta Unified and NG Charter timely filed a motion to dismiss based on the ground that Student failed to participate in a resolution session as required by 20 USC section 1415(f)(1) (B). Student filed an opposition to the motion on October 26, 2023. Banta Unified and NG Charter filed a reply to Student's opposition on October 27, 2023. After reviewing the parties' moving and opposition papers, and hearing oral argument of counsel on the motion, the ALJ denied the motion to dismiss.

The ALJ ordered the parties to participate in a resolution session by 5:00 PM on November 14, 2023, or enter into a written agreement to either waive their participation in a resolution session, or to participate in a mediation before OAH. If the parties participate in a resolution session they shall file a joint notice with OAH informing it that they participated in a resolution session by 5:00 PM on November 15, 2023. If the parties enter into a written agreement to waive participation in a resolution session, that signed agreement must be filed with OAH by 5:00 PM on November 14, 2023. If the parties agree to participate in a mediation, they must file a written request for a mediation with OAH by November 14, 2023 at 5:00 PM.

In order to allow the parties time to participate in a resolution session or enter into one of the agreements described above, the ALJ continued the PHC and the due process hearing to the dates set forth below. The case shall proceed as follows:

The PHC will be held on November 27, 2023, at 1:00 PM.

All other prehearing matters shall be addressed at the November 27, 2023 PHC. All prehearing motions must be filed three business days before the PHC.

The Due Process Hearing will be held on December 5, 2023, through December 7, 2023. The hearing will be conducted via telephone or videoconference using the Zoom software application. The hearing shall begin at 9:30 AM and end at approximately 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.

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.

Christine Arden

Christine Arden

Administrative Law Judge

Office of Administrative Hearings