BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT

OAH CASE NUMBER 2024100129

ORDER FOLLOWING PREHEARING CONFERENCE GRANTING REQUEST FOR CONTINUANCE

FEBRUARY 3, 2025

On February 3, 2025, Administrative Law Judge Chris Butchko, 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. Meagan Nunez, Attorney at Law, appeared on behalf of Student. Nicholas Felahi, Attorney at Law, appeared on behalf of San Diego Unified School District. Amy Seaman, Program Specialist for San Diego Unified, also attended the PHC. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

San Diego moved on January 29, 2025, to continue the prehearing conference and due process hearing because its counsel has been subpoenaed to appear for testimony in a civil matter in Riverside Superior Court during the week currently set for trial. Counsel for Student did not file in response to the motion, but stated at the PHC that Student did not oppose the motion if suitable dates could be settled.

The motion was timely filed three days prior to the prehearing conference, although a subsequent filing of the same motion was made on January 31, 2025, to correct a clerical error. As the refiling made no changes to the substance of the motion, it is deemed timely filed.

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. Counsel is involved in a state civil matter that takes precedence over this action. Counsel for San Diego cannot predict what day or days that week he will be required to testify. The ALJ discussed the possibility of going dark for any days on which counsel was called for testimony, but the parties agreed that the uncertainty in the schedule would be disruptive to the hearing and burdensome upon the parties and witnesses. In addition, having the hearing go dark would stretch out a hearing the parties otherwise anticipate would be completed in one week. Accordingly, good cause exists to grant a continuance.

All previously scheduled dates are vacated. The case shall proceed as follows:

PREHEARING CONFERENCE will be held on Friday, February 21, 2025, at 3:00 PM.

All other prehearing matters shall be addressed at the resumption of the prehearing conference on February 21, 2025. All prehearing motions must be filed three business days before the PHC. The parties do not need to refile their PHC statements.

DUE PROCESS HEARING will be held Tuesday, March 4, 2025, to Thursday, March 6, 2025.

The hearing will be conducted via telephone or videoconference and 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 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 PHC.

IT IS SO ORDERED.

Chris Butchko

Chris Butchko
Administrative Law Judge
Office of Administrative Hearings