BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

LEMOORE UNION ELEMENTARY SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2022080193

ORDER FOLLOWING PREHEARING CONFERENCE

GRANTING REQUEST FOR CONTINUANCE

DECEMBER 7, 2022

On December 5, 2022, Administrative Law Judge Penelope Pahl, Office of Administrative Hearings held a prehearing conference via videoconference. The Administrative Law Judge is called an ALJ. The prehearing conference is called a PHC.

Attorneys Elizabeth Rho-Ng and Adrienne Nichelini , appeared on behalf Lemoore Union Elementary School District. Parent appeared on behalf of Student. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

REQUEST FOR CONTINUANCE

At the time of the hearing, Parent requested another continuance. This is the third continuance granted in this case. Parent did not understand the role of an advocate, and expected an advocate to represent her. Parent requested additional time to find an attorney. Lemoore expressed concern regarding the delay in resolving Student's educational program but was willing to agree to another short continuance for Parent to secure counsel.

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. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

The request for continuance is granted for good cause. All previously scheduled dates are vacated. The case shall proceed as follows:

PREHEARING CONFERENCE will be held on January 27, 2023, at 10:00 AM

HEARING will be held on February 7, 8 and 9, 2023.

No further continuances will be granted to allow Parent to secure an attorney.

No further continuances will be granted for any other reason absent extraordinary good cause.

Parent is reminded that OAH maintains a list of low-cost and free attorneys on its website.

All other prehearing matters shall be addressed at the January 27, 2023 prehearing conference.

The hearing shall begin at 9:30 AM on all days unless otherwise ordered. The hearing shall continue day to day, as needed, Mondays and Fridays included, at the discretion of the Administrative Law Judge. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference or with a showing of good cause why the document was not timely filed.

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 are encouraged to continue discussions regarding 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.

IT IS SO ORDERED.

Penelope S. Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings