BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

MILPITAS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2025030762

ORDER GRANTING MILPITAS UNIFIED SCHOOL DISTRICT'S REQUEST FOR CONTINUANCE OF DUE PROCESS HEARING

JUNE 3, 2025

On March 19, 2025, Parent on behalf of Student filed a request for due process hearing, called a complaint, with the Office of Administrative Hearings, OAH, naming Milpitas Unified School District, called Milpitas. On April 25, 2025, OAH issued an order granting the parties' joint request to schedule mediation and continue the due process hearing. The prehearing conference was scheduled for May 23, 2025, and the due process hearing was continued to June 3 through 5, 2025.

OAH held the prehearing conference on May 23, 2025. Student and Milpitas were represented by their attorneys of record at the PHC.

On June 2, 2025, Student's attorney of record filed a notice of withdrawal of representation. On June 2, 2025, Milpitas filed a motion to continue the due process hearing. Milpitas' motion was supported by a declaration under penalty of perjury by attorney Kristal L. Tidwell. Attorney Tidwell asserted that the parties had reached the terms of a settlement agreement and were in the process of obtaining signatures on the agreement. Tidwell was informed by Student's attorney of record that she was in the process of obtaining Parent's signature on the settlement agreement. Student's attorney and Milpitas stipulated to postponing the uploading of exhibits into Case Center until May 29, 2025 on the belief the matter had been resolved. Tidwell further attests that she was informed by Student's counsel on June 1, 2025, that Parent would not sign the settlement agreement.

Following Student's attorney's withdrawal on June 2, 2025, Milpitas filed a motion for a two-week continuance. Milpitas argued it had a good faith belief the parties had reached a settlement agreement, and as a result did not meet and confer with Student's attorney about exhibits and witness schedules. Further, Milpitas argued it did not arrange for its witnesses to be available for the due process hearing scheduled for June 3, 2025, based on its belief the matter had been resolved.

On June 3, 2025, attorney Tidwell and Parent appeared for the due process hearing. Prior to convening the due process hearing, the undersigned Administrative Law Judge, called ALJ, heard arguments on Milpitas' motion to continue. Parent objected to a continuance on the grounds the settlement agreement was not signed and she believed the due process hearing should proceed.

OAH must conduct a due process hearing and issue a decision within 45 days of receiving the due process complaint, unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Resolving the due

process hearing quickly is legally required. Hearings may only be continued if "good cause" is established. (Ed. Code, § 56505, subd. (f)(3).) OAH is guided by the Administrative Procedure Act and the California Rules of Court when ruling on continuance motions. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.)

Good cause to continue a hearing may include:

- An essential lay or expert witness is unavailable because of death, illness, or other excusable circumstances;
- A party is unavailable because of death, illness, or other excusable circumstances;
- A party's attorney is unavailable because of death, illness, or other excusable circumstances;
- A new attorney substitutes in, but only if the party establishes that the substitution is required in the interests of justice;
- A new party is added, and the new party has not had a reasonable opportunity to prepare for trial, or other parties have not had a reasonable opportunity to prepare for trial regarding the new party's involvement;
- A party is unable to obtain essential testimony, documents, or other material evidence despite diligent efforts; or
- The case has a significant and unexpected change which makes the case not ready for trial.

Generally, continuances are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

Milpitas established good cause for a continuance of the due process hearing on the grounds it believed the parties had reached a mutually agreeable settlement agreement. Milpitas' request for continuance is granted.

The ALJ discussed mutually agreeable dates for the continued due process hearing. Parent's first available date to appear is July 8, 9, and 10, 2025. Milpitas is available on these dates. The ALJ also discussed the last day for the parties to meet and confer to discuss witness scheduling. The new dates are:

DEADLINE TO MEET AND CONFER: June 20, 2025, by 5:00 PM.

DUE PROCESS HEARING: July 8, 9, and 10, 2025.

The due process hearing will be held by videoconference or telephone, unless otherwise ordered. The due process hearing will begin at 9:30 AM on all days, and generally end at 3:30 PM, unless otherwise ordered. The hearing will continue day to day, as needed, Mondays and Fridays included, at the discretion of the ALJ.

The parties must immediately give potential witnesses the hearing dates, and must subpoena witnesses, if necessary, so they are available to testify. Failing to properly notify or subpoena a witness is not good cause to delay the hearing.

SETTLEMENT

The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached 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. At the same time, the parties should send the signature page of the

signed agreement or a letter withdrawing the case to OAH by visiting OAH Secure e-file at https://www.applications.dgs.ca.gov/oah/oahsftweb.

If a full and final written settlement agreement is reached after 4:00 PM the day prior to 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.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed 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.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings