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

OCTOBER 17, 2022

On October 17, 2022, Administrative Law Judge Cynthia Fritz, 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.

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

HEARING DATES, TIMES, AND LOCATION

Parent moved to continue the due process hearing, currently set for October 25, 2022, to February 2023 to hire counsel and due to unavailability because of medical appointments in December 2022 and January 2023. Lemoore Union Elementary School District did not oppose the motion but requested a December 6, 2022 due process hearing date.

The motion was not timely filed three days before the PCH. However, Parent established good cause for filing the motion less than three days before the PHC, because Student's attorney withdrew on October 11, 2022, and Parent was trying to draft a continuance request but was having difficulty completing it before the PHC.

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. Parent established good cause for a continuance to hire counsel but did not demonstrate Student needed over three months to accomplish this. Further, Student failed to submit any evidence of unavailability due to medical appointments. Thus, a shorter continuance is granted. Accordingly, the current due process hearing dates are vacated. The matter is set as follows:

PREHEARING CONFERENCE: December 5, 2022, at 1:00 PM.

DUE PROCESS HEARING: December 13, 14, and 15, 2022.

The hearing will be conducted via telephone or videoconference and will begin at 9:30 AM and end at 3:30 PM on all days, unless otherwise ordered. The hearing will continue day to day at the discretion of the ALJ.

The parties will immediately notify all potential witnesses of the hearing dates, and will 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.

FAILURE TO COMPLY

Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

Cynthia Fritz

Cynthia Fritz

Administrative Law Judge

Office of Administrative Hearings