BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

STOCKTON UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024060188

ORDER FOLLOWING PREHEARING CONFERENCE GRANTING REQUEST FOR CONTINUANCE

JULY 19, 2024

On July 19, 2024, Administrative Law Judge Kara Hatfield, 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.

Michelle Wilkolaski, Attorney at Law, appeared on behalf of Student. Rebecca Diddams and Dee Anna Hassanpour, Attorneys at Law, appeared on behalf of Stockton Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

Stockton moved to continue the prehearing conference and due process hearing based on multiple scheduling conflicts due to Parents and Stockton concurrently litigating four other matters regarding Student's siblings. On July 16, 2024, Parents and Stockton finished a nine-day hearing in OAH Case Number 2024050109, filed May 2, 2024. Written closing arguments are due on August 19, 2024. Also on July 16, 2024, Parents and Stockton started hearing in OAH Case Number 2024050547, filed May 10, 2024. The current witness schedule and hearing date calendar set by the ALJ in that case has the hearing going through and including August 6, 2024, which conflicts with the July 30, 2024 start date in this case. Parents and Stockton are scheduled to start a hearing on August 13, 2024, in OAH Case Number 2024050096, filed May 2, 2024. Based on Student's current proposed witness schedule presented to Stockton in Case Number 2024050096, that case is estimated to require 15 hearing days. Therefore, Stockton requests the hearing for this case, which was filed June 6, 2024, start on September 4, 2024.

The motion was timely filed three days before the prehearing conference. It was filed on the same date on which Stockton became aware that a due process hearing it believed would conclude sooner, involving Parents, would still be ongoing on the dates currently scheduled for hearing in this matter.

On July 19, 2024, Student opposed any continuance on the grounds that Parents, Stockton, and Stockton's attorneys could and should be able to appear in multiple matters simultaneously. Student further argued that whether the additional hearings involving the same parents and the same school district and district representative, and district's attorneys, would go forward was too speculative to schedule around at this time.

OAH takes official notice of Student's Motion to Continue filed in Case Number 2024050096 on June 16, 2024. There, Student asserted Parents were attending the hearing in Case Number 2024050098, which started on June 11, 2024, and the case was expected to still be ongoing when the hearing for Case Number 2024050096 was scheduled to start, on June 18, 2024. Student asserted, "Parent wants to be an active participant in the [2024050096] case, however, she cannot be in two places at once" and for that reason requested a two-week continuance in that case. Parents' position in Case Number 2024050096 undercuts Student's argument again Stockton's request for a continuance in this case.

Further, during the PHC, Stockton argued that during the course of two due process hearings, Parent attempted to appear simultaneously in both, to great disruption in both. Parent's conduct evidences a strong desire to participate in each child's case and the scheduling conflict Student's counsel created should not prevent Parents from attending and providing their full attention to each due process hearing they have requested.

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 to afford Parents, as well as Stockton's representative and attorneys, the opportunity to fully participate in each due process hearing, with priority given to earlier-filed matters proceeding to hearing first. All previously scheduled dates are vacated. The case shall proceed as follows:

PREHEARING CONFERENCE will be held on August 23, 2024, at 3:00 PM.

All other prehearing matters shall be addressed at the August 23, 2024 PHC. All prehearing motions must be filed three business days before the PHC.

DUE PROCESS HEARING will be held on September 4 and 5, 2024.

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.

Kara Hatfield

Kara Hatfield
Administrative Law Judge
Office of Administrative Hearings