BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

LOS GATOS-SARATOGA UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2022020732

# ORDER FOLLOWING PREHEARING CONFERENCE GRANTING REQUEST FOR CONTINUANCE

APRIL 4, 2022

On April 4, 2022, Administrative Law Judge Adrienne L. Krikorian, 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.

Parents appeared on behalf of Student. Chinese interpreter Cindy Chau assisted Parents. Attorney Jan Tomsky appeared on behalf of Los Gatos-Saratoga Union High School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

## HEARING DATES, TIMES, AND LOCATION

Los Gatos-Saratoga Union High School District filed a motion continue the prehearing conference and due process hearing on March 30, 2022. The motion was not timely filed three days prior to the prehearing conference. However, Los Gatos-Saratoga established good cause for filing the motion less than three days before this PHC. Attorney Tomsky asserted that Los Gatos retained Tomsky on March 30, 2022, one day after the parties participated in mediation. Tomsky also asserted in a declaration that Tomsky, and school staff, were not available on the April 12, 13, and 14, 2022 hearing dates originally scheduled by OAH.

Parents filed an opposition to the motion on March 30, 2022, asserting the motion to continue was untimely. However, Parents did not establish that Student would suffer any prejudice by a short continuance of the hearing due to the unavailability of Los Gatos's counsel and staff on the original hearing dates.

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).)

Los Gatos's counsel established good cause for a short continuance of the hearing due to its trial counsel's and school staff's unavailability on hearing dates originally set by OAH. The request for continuance is granted for good cause to ensure that both parties have the opportunity for due process.

All previously scheduled dates are vacated. The case shall proceed as follows based upon discussion and agreement by the parties:

Prehearing Conference by Videoconference: April 25, 2022, 3:00 p.m.

All other prehearing matters shall be addressed at the April 25, 2022 prehearing conference. All prehearing motions must be filed three business days before the PHC. Parents shall file an amended PHC statement three business days before the PHC, identifying with specificity the issues for hearing arising under the Individuals with Disabilities Education Act, a separate list of exhibits chronologically listed with date and title of each document, and a separate list of proposed witnesses, in compliance with the February 23, 2022 Scheduling Order. Parents shall be prepared to discuss the availability of their expert witness on the scheduled hearing dates, as discussed by the parties during the PHC.

Due Process Hearing by Videoconference: May 3, 4, and 5, 2022

The hearing shall begin at 9:30 AM on all hearing 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.

## IT IS SO ORDERED.

*Adrienne L. Krikorian*

Adrienne L. Krikorian
Administrative Law Judge
Office of Administrative Hearings