BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

GARDEN GROVE UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2023070868

ORDER FOLLOWING PREHEARING CONFERENCE

GRANTING REQUEST FOR CONTINUANCE

AUGUST 14, 2023

On August 14, 2023, Administrative Law Judge Judith Pasewark, Office of Administrative Hearings, called OAH, 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. Attorney Lindsey Steinmetz appeared on behalf of Garden Grove Unified School District. Parent did not appear on behalf of Student. Garden Grove's attorney stated Parent has not responded to their requests for consent to Student's individualized education program, nor has Parent responded to Garden Grove's communications to discuss the due process complaint, set a mediation date, and continue the hearing. OAH notified Parent of this PHC in its Scheduling Order. The ALJ notified Parent by email of this PHC. The ALJ delayed the beginning of the PHC to

await Parent's attendance. The ALJ then commenced the PHC without Parent in attendance. The PHC was recorded.

HEARING DATES, TIMES, AND LOCATION

On August 8, 2023, Garden Grove filed a motion to continue the PHC and due process hearing based on their attorney's hearing conflict with OAH Consolidated Cases Nos. 2023010055 and 2023010404. The consolidated cases were filed prior to the current case.

The motion was timely filed three days prior to the PHC. This is the first request for continuance on this matter. Garden Grove appropriately served Parent with the motion to continue. OAH received no objection to Garden Grove's motion.

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. All previously scheduled dates are vacated. The case shall proceed as follows:

MEDIATION DATE is September 13, 2023, 9:00 AM to 12:30 PM.

MEDIATION will occur via telephone or videoconference.

PREHEARING CONFERENCE will be held on September 25, 2023, at 10:00 AM.

All other prehearing matters shall be addressed at the September 25, 2023 PHC. All prehearing motions must be filed three business days before the PHC.

DUE PROCESS HEARING will be held on October 3, through 5, 2023.

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.

Judith Pasewark

Judith Pasewark

Administrative Law Judge

Office of Administrative Hearings