BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2020010176

AMENDED ORDER FOLLOWING STATUS CONFERENCE WITH CORRECT HEARING DATE OF MAY 6, 2020

APRIL 20, 2020

On April 17, 2020, Administrative Law Judge Sabrina Kong, Office of Administrative Hearings, held a telephonic status conference to determine the availability of witnesses to testify on the last day of hearing. The Administrative Law Judge is called an ALJ; and the Office of Administrative Hearings is called OAH.

Attorney Diana Renteria appeared on Student's behalf. Non-attorney advocate Jim Peters from Student's attorney's office was also present. Attorney Jonathan Read appeared on Chaffey Joint Union High School District's behalf. Chaffey Joint Union High School District is called Chaffey. The status conference was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

DUE PROCESS HEARING

The hearing is continued to May 6, 2020. The hearing shall begin at 9:30 AM and generally end at 3:30 PM, unless otherwise ordered. The parties represented that this will be the last day of the hearing.

HEARING LOCATION

OAH is authorized to conduct due process hearings by videoconference or telephone. (5 C.C.R. § 3082, subd. (g).) Based on state and federal guidance to address safety procedures due to the novel coronavirus, COVID-19, OAH will conduct the due process hearing by videoconference using the Microsoft Teams application. Unless otherwise ordered, participants are required to appear by videoconference using a webcam and Microsoft Teams.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses, if necessary, to ensure that the witnesses will appear to testify. A party's failure to notify or subpoena a witness to testify will not be considered a showing good cause to continue the hearing.

UPDATED PARTICIPANT INFORMATION FORM

Both parties shall file a Participant Information Form with OAH by April 23, 2020, and have an ongoing obligation to ensure that the information on the Participant Information Form filed with OAH is current, and shall file an updated Form as necessary. The parties must file an updated Participant Information Form to inform OAH of any

changes, additions, or deletions, and include the required information no later than 5:00 PM at least two business days before the first day of hearing.

Any contact information provided by Chaffey shall be used by Student for the limited purpose of issuing subpoenas or for contacting the witness(es) for purposes of attending the hearing and shall not be disclosed to any other person(s).

ACCOMMODATIONS

A Spanish language interpreter is required. OAH will provide the interpreter.

AUDIO ONLY OR TELEPHONIC TESTIMONY

Whether a witness may appear by audio only or telephone instead of videoconference is a matter within the discretion of the ALJ. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) Any party seeking to present a witness by audio only or telephone shall request permission to do so before the hearing. Any party seeking to present a witness who cannot access exhibits electronically must inform the ALJ at the beginning of the hearing.

ELECTRONIC RECORDINGS

AUDIO RECORDING

A party may request permission to make an audio recording of the hearing. Permission to make an audio recording is subject to the ALJ's discretion and based upon certain conditions. The conditions are:

- the OAH recording is the only official recording;
- participants shall not use Teams to record the hearing;

- the parties shall turn their recording device on and off at the same time that the ALJ is on and off the record to avoid recording conversations while off the record;
- operation of the party's recording mechanism will not be allowed to delay the hearing;
- a parties' recording may not be given, provided or played to a witness, or potential witness; and
- the recording is subject to the same confidentiality as the due process hearing;
- use of the chat function in the videoconference is prohibited and shall not be part of the official record;
- participants shall not take screenshots of the videoconference, or share or publish any portion of the videoconference or audio recording.

The parties' request to audio record is granted, subject to these conditions. The parties agreed that the audio recording shall be made with an external audio recording device. The parties shall not audio record using Microsoft Teams.

VIDEO RECORDING

No party, witness or anyone else may make any video recording of any part of the proceedings or stream live through any means.

HEARING OPEN OR CLOSED TO THE PUBLIC

The hearing had been opened to the public at Student's request during prior hearing days. An ALJ may restrict attendance because of the physical limitations of the hearing facility, or take other action to promote due process or the orderly conduct of the hearing. (Tit. 1, Cal. Code Regs., § 1030.) Government Code, section 11425.20

empowers the ALJ to order an open hearing to be closed or make other protective orders to the extent necessary or proper to ensure a fair hearing in the circumstances of the particular case. Currently, amid COVID-19 concerns, all hearings are being conducted via videoconference without observers present or participating in the videoconference. OAH will provide the hearing recording upon request.

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 at https://www.applications.dgs.ca.gov/oah/oahsftweb.

If a full and final written settlement agreement is reached after 4:00 p.m. 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.

FAILURE TO COMPLY

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

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Sabrina Kong
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Sabrina Kong

Administrative Law Judge

Office of Administrative Hearings