BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2019120864

ORDER FOLLOWING PREHEARING CONFERENCE GRANTING REQUEST FOR CONTINUANCE

On December 20, 2019, Student filed a Notice of Remand with the Office of Administrative Hearings, known as OAH, with a copy of a District's Court's Minute Order remanding an issue decided in OAH Case number 2018080938. The remand order vacated the finding that Irvine Unified School District's offer of a modified curriculum was inappropriate and remanded the matter for further consideration. The remand order provides, "the ALJ is free to determine whether the education [of Student] at Prentice was actually a modified education, and if so, whether that fact changes the determination that 'no evidence was presented that modified curriculum would provide a meaningful education benefit consistent with Student's low average cognitive abilities.'"

On September 23, 2019, OAH issued a scheduling order setting a telephonic prehearing conference, known as a PHC, for December 30, 2019. The scheduling order set due process hearing dates for January 7, 8, and 9, 2020.

On December 27, 2019, Student filed a motion to vacate hearing dates and set a briefing schedule on the grounds that the remand Order did not require a rehearing. Student concurrently filed a motion to continue the dates OAH set for hearing on the grounds Student's counsel was not available on the dates set.

On December 30, 2019, Administrative Law Judge Cole Dalton held a telephonic PHC. The Administrative Law Judge will be referred to as an ALJ. Lauren-Ashley Caron, Attorney at Law, appeared on behalf of Student. Daniel Gonzalez, Attorney at Law, appeared on behalf of Irvine Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

Student moved to vacate hearing dates and continue the matter for submission of written briefs. Irvine objected on grounds that it did not have sufficient time to file a written opposition and that subsequent evidence admitted on additional hearing dates would shed light on the remanded issue.

Student's motions were timely filed three days prior to the PHC. Irvine's written opposition was not due until January 2, 2020. During the PHC, Irvine made an offer of proof opposing the motion and seeking hearing dates to permit District to offer evidence acquired after the hearing in OAH Case number 2018080938.

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 District Court did not order a rehearing or that new or additional evidence should be heard. The sole issue on remand does not require a hearing. Although, District orally opposed the motion to vacate dates, District failed to offer authority or a persuasive reason for a hearing to raise evidence of events that occurred after the initial hearing.

The request for continuance is granted for good cause. The request to vacate hearing dates and set a briefing schedule is granted. All previously scheduled dates are vacated. The case shall proceed as follows, unless otherwise ordered:

Opening Briefs Due: February 21, 2020, by 5:00 PM

Reply Briefs Due: March 2, 2020, by 5:00 PM

Opening and reply briefs shall be double-spaced using a 12-point font. Opening briefs shall be no more than 25 pages long. Reply briefs shall be no more than ten pages long.

Parties are to address whether Student's education at Prentice was actually a modified education, and if so, whether that fact changes the determination that "no evidence was presented that modified curriculum would provide a meaningful education benefit consistent with Student's low average cognitive abilities." Parties shall cite to specific portions of the administrative record in support of their positions and in light of the District Court's December 5, 2019-minute order.

IT IS SO ORDERED.

DocuSigned by:
57CDEBDAC9CC499...

DATED: December 31, 2019

Cole Dalton
Administrative Law Judge
Office of Administrative Hearings