BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

LARCHMONT CHARTER SCHOOL.

OAH CASE NUMBER 2021030156

ORDER GRANTING REQUEST FOR CONTINUANCE AND SETTING HEARING DATES

JULY 21, 2021

On July 21, 2021, Larchmont Charter School filed with the Office of Administrative Hearings, referred to as OAH, a letter requesting that the hearing in this matter, which is already in progress, go dark on July 22 and July 23, 2021, based upon its right to file opposition to Student's Motion to Allow for Testimony by Declaration. Student's Motion, which was filed and served on July 19, 2021, concerns the testimony of Mother, who is scheduled to appear and testify on the morning of July 22, 2021, when the hearing is currently scheduled to recommence. However, pursuant to OAH practice, Charter has until close of business on July 22, 2021, to file its opposition to Student's Motion, and, pending Student's Motion and a ruling thereon, Mother's status as a

witness is necessarily unknown. Student's letter is deemed a request to continue the hearing.

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).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

Granted. All dates are vacated. The continuance request is granted as good cause is demonstrated for several reasons. First, Charter has stated its intention to exercise its right to oppose Student's Motion, which was filed too close to the hearing

date of July 22, 2021, to permit Charter to timely file its opposition prior to that date. Second, the tenor of Student's Motion and the statements therein justify allowing Charter to file opposition to Student's Motion. Third, a continuance is warranted until an Order issues with respect to Student's Motion. Student has not filed any opposition to Charter's request, but, considering the nature of Student's Motion, Student's delay in filing his Motion until just prior to the July 22, 2021, hearing date, and the relief Student seeks at hearing, Student should not be prejudiced by a brief continuance. Therefore, this matter will be set as follows, subject to the ruling on the Motion:

Due Process Hearing will be held on July 27, 2021 through July 28, 2021. The hearing shall begin at 9:30 AM on all days unless otherwise ordered. The hearing shall be held by videoconference, and shall continue day to day as needed at the discretion of the Administrative Law Judge.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure their availability to testify. Good cause for witness unavailability is not established by failing to properly notify or subpoena a witness.

Charter shall file and serve its opposition to Student's Motion by no later than close of business on July 22, 2021.

IT IS SO ORDERED.

Elsa Jones

Elsa H. Jones
Administrative Law Judge
Office of Administrative Hearings