BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT

v.

LONG BEACH UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020090441

ORDER FOLLOWING PREHEARING CONFERENCE, GRANTING MOTION FOR CONTINUANCE

JANUARY 11, 2021

On January 11, 2021, Administrative Law Judge Clifford H. Woosley, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Tania L. Whiteleather, Attorney at Law, appeared on behalf of Student. Debra K. Ferdman, Attorney at Law, appeared on behalf of Long Beach Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

LONG BEACH'S MOTION FOR CONTINUANCE

Long Beach Unified made an oral motion to continue the hearing at the PHC. In support, Long Beach Unified filed a declaration from Ms. Ferdman's paralegal, who was confirmed COVID-19 positive over the prior weekend, having been exposed while at work in Long Beach Unified's offices. The hearing is presently scheduled to begin on January 20 and 21, 2021.

APPLICABLE LAW

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; or whether the interests of justice are served.

DISCUSSION

Here, the paralegal is symptomatic and on sick leave at home. While at Long Beach Unified's office the week of January 4, 2021, the paralegal came into contact with other Long Beach Unified employees, including some who are likely to testify at hearing. These individuals' quarantine and COVID-19 testing outcomes are yet to be determined. Ms. Ferdman works directly for Long Beach Unified and is responsible for special education mediation, PHC's, and due process hearings. Ms. Ferdman relied on the paralegal for contacting witnesses before and during hearing, confirming those who work for Long Beach Unified, obtaining addresses of witnesses no longer working for Long Beach Unified, assembling exhibits, and uploading exhibits to OAH's electronic evidence program for hearing. Long Beach Unified and Ms. Ferdman have not had the opportunity to find and obtain the necessary support for counsel and, therefore, would be prejudiced if required to proceed to hearing as presently scheduled. For example, the statutory exchange of exhibits, now typically done by uploading the proposed documentary evidence to the evidence program used by OAH, would be due tomorrow, January 12, 2021. However, Ms. Ferdman has not uploaded such documents previously and, additionally, cannot presently access the exhibits for assembly and upload.

Ms. Ferdman immediately contacted Student's counsel on Saturday, January 9, 2021, upon receipt of her paralegal's positive test. Ms. Whiteweather checked with her client and Student is agreeable to a continuance. Appropriate continuance dates were discussed at the prehearing conferences. Good cause exists and the motion to continue is granted.

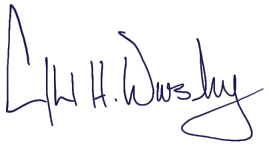
All dates are vacated, and this matter is scheduled as follows:

PREHEARING CONFERENCE will be held on February 19, 2021, at 10:00 AM.

DUE PROCESS HEARING will be held on March 9, 10, and 11, 2021.

The hearing shall begin at 9:30 AM on all days unless otherwise ordered. The hearing shall continue day to day, as needed at the discretion of the Administrative Law Judge. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference or with a showing of good cause why it was not timely filed.

IT IS SO ORDERED.



Clifford H. Woosley
Administrative Law Judge
Office of Administrative Hearings