BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>HUNTINGTON BEACH CITY SCHOOL DISTRICT. | OAH Case No. 2016040336<br><br>ORDER FOLLOWING PREHEARING CONFERENCE GRANTING CONTINUANCE OF MEDIATION, PREHEARING CONFERENCE, AND DUE PROCESS HEARING DATES |

On Monday, August 1, 2016, a telephonic prehearing conference was held before Administrative Law Judge Ted Mann, Office of Administrative Hearings. Phillip VanAllsburg, Attorney at Law, appeared on behalf of Student. Justin Shinnefield, Attorney at Law, appeared on behalf of Huntington Beach City School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order.

1. Hearing Dates, Times, and Location. The parties jointly requested a second continuance of the mediation, prehearing conference and due process hearing dates in order to engage in resolution discussions, including review of independent educational evaluations at an individualized educational program meeting once school has commenced for the fall semester.

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. (See 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; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

Although, good cause has been shown for the requested continuance, further continuances are not contemplated because the parties will have had more than enough time

to negotiate and prepare for hearing. The request is granted. All dates are vacated. This matter will be set as follows:

Mediation Date and Time. OAH was unable to accommodate Student's request for a Friday mediation on the date requested. The mediation shall take place on Tuesday, September 6, 2016 at 9:30 a.m. at the District's offices located at 5832 Bolsa Ave., Huntington Beach, CA, 92649.

Prehearing Conference Date and Time. The prehearing conference is continued to Monday, September 19, 2016 at 1:00 p.m. The prehearing conference will be conducted by telephone as detailed in the Scheduling Order. PHC Statements, Witness Lists, and Exhibit Lists shall be filed as detailed in the Scheduling Order.

Due Process Hearing. The hearing shall take place on September 27 - 29, 2016, and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin each day at 9:00 a.m. with the exception of the first day of hearing, on which day the hearing shall begin at 9:30 a.m. The hearing shall take place at the District's offices located at 5832 Bolsa Ave., Huntington Beach, CA, 92649.

The parties shall immediately notify all potential witnesses of the continued hearing dates, and shall re-subpoena witnesses as 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, as applicable.

2. As ordered in the scheduling order, the named local educational agency was to provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities. The named local educational agency failed to certify that it would provide a facility for this case that complied with the law. The local educational agency shall inform OAH within two days of the date of this order it is able to certify that it will provide a facility that complies with the law.

3. All other PHC matters will be addressed at the PHC on September 19, 2016 at 1:00 p.m.

4. 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 should 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.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 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. THE PARTIES SHOULD SIMULTANEOUSLY **FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT THE FAXINATION LINE at 916-376-6319.**

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 the evening prior to the hearing or the morning of the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement as noted above, the parties shall submit a request for a status conference and provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

IT IS SO ORDERED.

DATE: August 2, 2016

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Ted Mann
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TED MANN
Administrative Law Judge
Office of Administrative Hearings