BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: LOS ALAMITOS UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2018081156 ORDER DENYING STUDENT'S REQUEST FOR CONTINUANCE; ORDER DISCLOSING STUDENT'S EX PARTE COMMUNICATION AND NOTICE OF NO ACTION

On September 6, 2018, Mother, on behalf of Student, filed a request to continue the dates in this matter with the Office of Administrative Hearings, based upon conflicts with previously set court proceedings. On September 7, 2018, Los Alamitos Unified School District filed a response that did not object to a continuance, but wished to meet and confer with Student on agreeable hearing dates.

Additionally, Student's September 6, 2018 request included a four page document entitled Issues of Non-Compliance, which Los Alamitos asserts was not included in Student's continuance request, although mentioned in the request.

Continuance Request

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).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances, and Student's request is denied without prejudice. All hearing dates and timelines shall proceed as calendared. Here, Student has requested a continuance of the hearing dates, and OAH is inclined to grant the continuance. However, the parties did not discuss and confer regarding new hearing dates as required by OAH. Forms are available on the OAH website that explain the procedure. Either party may re-submit the request to continue after they have agreed upon hearing dates. If the parties are unable to agree on hearing dates, they may request OAH to select dates.

Ex Parte Communication

Ex parte communications are not permitted while a due process proceeding is pending. "[W]hile special education due process hearing proceedings are pending there shall be no communication, direct or indirect, regarding any issue in the proceeding, to a hearing officer from an employee or representative of a party or from an interested person unless the communication is made on the record at the hearing." (Cal. Code. Regs., tit. 5, § 3084, subd. (a).) When an ex parte communication is received, the administrative law judge presiding over the matter must disclose the communication to all parties, make it part of the record, and allow the parties an opportunity to address the matter within 10 days of receipt of the notification of communication. (Cal. Code. Regs., tit. 5, § 3084, subds. (c)-(e).)

Here, the ex parte communication was made to OAH with the expectation that the Administrative Law Judge assigned to hear this matter would read the document and intended to affect the conduct of the hearing. As such, it must be disclosed to all parties, and made a part of the record. This Notice therefore discloses the communication to Los Alamitos.

The September 6, 2018 Issues of Non-Compliance shall be attached to this Notice and shall be made part of the record in this matter.[1] The undersigned has taken no actions based upon the allegations contained in September 6, 2018 Issues of Non-Compliance, and OAH shall take no action in response to the Issues of Non-Compliance as Mother did not serve a

[1] If Student wishes to file his own request for a due process hearing against Los Alamitos, instructions are available at OAH's website, http://www.dgs.ca.gov/oah/SpecialEducation.aspx

copy of the motion on Los Alamitos or its attorney, other than to remind Mother that a copy of any document submitted to OAH must also be provided to Los Alamitos's counsel at the same time.

IT IS SO ORDERED.

DATE: September 12, 2018

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Peter Paul Castillo
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PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings