BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

IRVINE UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NUMBER 2019061154

ORDER DENYING STUDENT'S MOTION TO QUASH SERVICE; RESETTING CASE TIMELINE; GRANTING IRVINE'S REQUEST FOR CONTINUANCE; AND SETTING PREHEARING CONFERENCE AND DUE PROCESS HEARING

On June 26, 2019, Irvine Unified School District filed with the Office of Administrative Hearings a request for due process hearing, referred to as complaint, naming Parent on behalf of Student. Irvine sent a copy of the complaint to the last address Irvine had on file for Parent. Parent denied he received the complaint based on having moved his residence. Parent acknowledged he received the complaint electronically on July 9, 2019.

On July 9, 2019, Irvine filed with the Office of Administrative Hearings a request to continue this matter, based upon several reasons supported by a declaration from Irvine's counsel. The evidence included an email in which Parent informed Irvine that

Parent was out of the country until August 10, 2019, it was not possible for Parent to attend anything before that date, and he needed to reschedule the due process hearing.

On July 11, 2019, Parent filed a motion to quash service of the complaint asserting Irvine failed to personally serve him. He requested the dates for the due process hearing be rescheduled to dates after he is "properly served."

Parent received the complaint on July 9, 2019. Personal service of a special education due process hearing request is one option but is not required under title 5, California Code of Regulations, section 3083. OAH will restart the timeline for the case based on Parent's receipt of the complaint on July 9, 2019.

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).)

Parent is unavailable for hearing until after August 10, 2019. Irvine proposed hearing dates on October 15, 16, and 17, 2019, and Parent did not oppose those dates based on his own unavailability or any other reason he could not be prepared to proceed to hearing two months after he returns home.

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

Granted. All dates are vacated. This matter will be set as follows:

If the parties reach agreement about a date for mediation, they may contact OAH with proposed dates for mediation.

Prehearing Conference will be held on October 4, 2019, at 10:00 AM.

Due Process Hearing will be held on October 15, 16, and 17, 2019. The hearing shall begin at 9:30 AM the first day, and at 9:00 AM on all other days unless otherwise ordered. The hearing 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. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference or with evidence of

good cause why it was not possible to file the motion by that date.

IT IS SO ORDERED.

DocuSigned by:
Kara Hatfield
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DATED: July 15, 2019

Kara Hatfield
Administrative Law Judge
Office of Administrative Hearings