BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2017050979 ORDER FOLLOWING PREHEARING CONFERENCE; GRANTING, IN PART, MOTION TO ALLOW TELEPHONIC TESTIMONY; AND CONTINUING PREHEARING CONFERENCE AND HEARING

On July 10, 2017, a telephonic prehearing conference was held before Administrative Law Judge Cole Dalton, Office of Administrative Hearings. Jonathan Read, Attorney at Law, appeared on behalf of Chaffey Joint Union High School District. Advocate James Peters, III and attorney Arthur Sloane appeared on behalf of Student. The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

1. Motion to Continue Hearing Dates. On July 3, 2017, District filed a motion to continue the hearing dates in this matter due to counsel and witness unavailability. Student filed an opposition on July 7, 2017, on the grounds that a delay in the hearing would cause prejudice to Student's need for ongoing intervention.

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. This was the first request for continuance. District sought dates within 45 days of the date originally set for hearing. Student has aged out of special education services and did not show how a brief continuance of the hearing would result in prejudice to him. The request is granted. Accordingly, all dates are continued and this matter is calendared as follows:

Prehearing Conference:	August 18, at 1:00 p.m.
Due Process Hearing:	August 29 and 30 and September 6 and 7, 2017 and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 a.m. all other days, unless otherwise ordered.

The hearing shall take place at the West End SELPA offices located at 9630 7th Street, Rancho Cucamonga, CA 91730. As ordered in the scheduling order, the named local educational agency shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 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 local educational agency shall inform OAH within two days of the date of this order if it is unable to comply with this order.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if 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. Motion to Allow Telephonic Testimony. On July 3, 2017, Student filed a motion to allow his expert witnesses to testify telephonically. District opposed the motion during the prehearing conference but did not file a written opposition.

Whether a witness may appear by telephone is a matter within the discretion of the ALJ. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) Any party seeking to present a witness by telephone shall move in advance for leave to do so, unless the opposing party has stipulated that the witness may appear by telephone.

Student seeks an order allowing his functional behavior expert, Dr. Dian Tackett, to testify telephonically as she resides in Colorado. Student cannot afford the costs of procuring her personal appearance at hearing, which would include round trip airfare and accommodations.

Student's motion to allow Dr. Dian Tackett to testify telephonically is granted. Student shall provide Dr. Tackett with a complete exhibit binder from each party, containing all of each party's exhibits, prior to the hearing. District shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness. No witness will be heard by telephone unless all these requirements have been fulfilled.

Dr. David Paltin, clinical psychologist, has a practice based in Orange, California. Student argued that Dr. Paltin could not clear his schedule to testify in person. However, Student did not offer a declaration in this regard.

Student's motion to allow Dr. Paltin to testify telephonically is denied, without prejudice. Student did not show that Dr. Paltin, whose practice is local, could not testify in person.

3. 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.

4. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: July 11, 2017

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COLE DALTON
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Administrative Law Judge
Office of Administrative Hearings