BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAUGUS UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2021040751

ORDER GRANTING REQUEST FOR CONTINUANCE AND SETTING PREHEARING CONFERENCE AND HEARING DATES

JUNE 11, 2021

On June 8, 2021, Saugus filed with the Office of Administrative Hearings, referred to as OAH, a request to continue this matter, based upon Saugus' trial attorney's obligations in an ongoing hearing in OAH Case No. 2020120161 (erroneously identified in Saugus' Motion as OAH Case No. 2020120160) that preclude the beginning of the hearing in the instant case on the presently scheduled hearing dates of June 15, 2021 through June 17, 2021. Student's attorney is also attorney of record in OAH Case No. 2020120161, and is currently representing Student in the hearing of that case.

On June 11, 2021, Student opposed the request based upon representations that the conflict with the hearing in 2020120161 was speculative and or that Saugus was not entitled to the attorney of its choice representing it at hearing. In the Opposition, Student failed to notify the court that ALJ A. Krikorian had concluded a second day of hearing in OAH Case No. 2020120161 on June 10, 2021, and had continued the hearing to a third day of hearing on June 15, 2021, the presently scheduled first day of hearing in the instant case. Student also failed to inform OAH that Student estimated that the hearing in OAH Case No. 2020120161 would require six to eight days of testimony by Student's witnesses, not including time for District's case or witnesses. It is noted that Student's attorneys are members of the State Bar of California and are thereby officers of the court with the attendant obligations.

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).)

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

Granted. All hearing dates are vacated. The continuance request is granted as establishing good cause for a continuance in the scheduling conflict between the ongoing hearing in OAH Case No. 2020120161 and the instant case. This matter will be set as follows:

Due Process Hearing will be held on July 20, 2021 through July 22, 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.

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.

IT IS SO ORDERED.
Ted Mann

Ted Mann
Administrative Law Judge
Office of Administrative Hearings