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>ANTIOCH UNIFIED SCHOOL DISTRICT. | OAH Case No. 2018050914<br><br>ORDER FOLLOWING PREHEARING CONFERENCE AND GRANTING CONTINUANCE |

On July 9, 2018, a telephonic prehearing conference was held before Administrative Law Judge Penelope Pahl, Office of Administrative Hearings. Tania Whiteleather, Attorney at Law, appeared on behalf of Student. Matthew Tamel, Attorney at Law, appeared on behalf of Antioch Unified School District. The PHC was recorded.

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

1. Prehearing Motions Filed. Prior to the Prehearing conference the following motions were timely filed: Student's motions for a continuance and to amend the complaint; Antioch's motion to dismiss and two motions in limine.

2. Student's Motion for Continuance. At the time of the Prehearing Conference, the motion for a continuance was considered. Antioch informed the undersigned that their opposition had been filed the morning of July 9, 2018. This was a timely opposition; however, it had not yet been recorded in OAH's docket at the time of the Prehearing Conference thus had not been considered by the time of the PHC. Antioch agreed to orally argue its opposition.

Student requests a continuance to secure a necessary witness who is unavailable to conduct an assessment until September. District opposed the motion, which originally sought a continuance until October, on the grounds that such an extensive continuance was unnecessary, the assessment should be conducted during the summer as Student was being home schooled and, further, that the information to be offered by the witness was irrelevant. Antioch was willing to agree to a continuance until late August when Antioch faculty and staff had returned for the 2018-2019 school year.

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; the inability to obtain essential testimony, documents 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).)

There have been no prior continuances in this case. Student asserts that the completion of the assessment by Dr. Grandison is critical to her case, that Dr. Grandison is unavailable to conduct her assessment prior to September 2018, and that Dr Grandison is unable to prepare her testimony without conducting the assessment. Antioch objected on the grounds that the testimony was irrelevant and there was no reason for delaying the assessment as Student was currently enrolled in a home-school program. The relevance or materiality of evidence is not determined at the time of a motion for a continuance. Student's witness is not available until September. No prejudice was demonstrated by Antioch due to the granting of a continuance. Therefore, the continuance is GRANTED. All previously scheduled dates are hereby VACATED. The new dates are:

Prehearing Conference: September 7, 2018 at 10:00 a.m.

Hearing: September 18, 19, and 20, 2018

The hearing shall take place at the location specified in the original scheduling order. All other Prehearing matters shall be addressed at the September 7, 2018 Prehearing Conference.

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.

3. Rulings on Other Motions to Follow the Prehearing Conference. The parties were informed that rulings on Student's motion to amend her complaint, and Antioch's Motions to Dismiss would be made in writing following the July 9, 2018 Prehearing Conference. The Motions in Limine will be addressed at the time of the September 7, 2018 Prehearing Conference.

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 **EMAIL THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT** https://www.applications.dgs.ca.gov/oah/oahsftweb.

IT IS SO ORDERED.

DATE: July 9, 2018

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Penelope S. Pahl
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PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings