BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

LONG BEACH UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2024080420

ORDER FOLLOWING PREHEARING CONFERENCE AND GRANTING MOTION TO CONTINUE HEARING

AUGUST 26, 2024

On August 26, 2024, Administrative Law Judge Cole Dalton, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Meagan Kinsey, Attorney at Law, appeared on behalf of Long Beach Unified School District. PHC invitations had been sent to both Parents. The ALJ trailed the PHC for 20-minutes to allow for late appearances. No appearance was made on behalf of Student. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

MOTION TO CONTINUE HEARING

On August 9, 2024, Long Beach filed a request for due process hearing, or complaint, naming Student.

On August 21, 2024, Long Beach filed a request to continue the hearing based upon conflict with another OAH matter. At the time of the PHC, Long Beach's counsel had a hearing conflict with an expedited due process case also scheduled for hearing on September 4 and 5, 2024, in OAH case number 2024070467.

OAH must conduct a due process hearing and issue a decision within 45 days of receiving the due process complaint unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Resolving the due process hearing quickly is legally required. Hearings may only be continued if "good cause" is established. (Ed. Code, § 56505, subd. (f)(3).) OAH is guided by the Administrative Procedure Act and the California Rules of Court when ruling on continuance motions. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.)

Good cause to continue a hearing may include:

- An essential lay or expert witness is unavailable because of death, illness, or other excusable circumstances;
- A party is unavailable because of death, illness, or other excusable circumstances;
- A party's attorney is unavailable because of death, illness, or other excusable circumstances;

- A new attorney substitutes in, but only if the party establishes that the substitution is required in the interests of justice;
- A new party is added, and the new party has not had a reasonable opportunity to prepare for trial, or other parties have not had a reasonable opportunity to prepare for trial regarding the new party's involvement;
- A party is unable to obtain essential testimony, documents, or other material evidence despite diligent efforts; or
- The case has a significant and unexpected change which makes the case not ready for trial.

Generally, continuances are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

Long Beach established good cause to continue the due process hearing. Long Beach's counsel is counsel of record in an expedited due process hearing, also scheduled to begin September 4, 2024. The expedited case cannot be continued due to laws governing expedited due process hearings. Long Beach attempted to meet and confer with Student regarding dates for a continuance of this case. Long Beach identified unavailability due to other hearings and prepaid vacation travel, until the dates requested for hearing. This is a first request for continuance in a recently filed case.

The request is granted. All previously scheduled dates are vacated. The new dates are:

PREHEARING CONFERENCE will be held on October 11, 2024, 1:00 PM.
DUE PROCESS HEARING will be held on October 22, 23, and 24, 2024.

The prehearing conference and due process hearing will be held by videoconference or telephone, unless otherwise ordered. The due process hearing will begin at 9:30 AM on all days, and generally end at 3:30 PM, unless otherwise ordered. The hearing will continue day to day, as needed, Mondays and Fridays included, at the discretion of the Administrative Law Judge. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference. Late motions will only be considered if good cause is established for the late filing.

The parties must immediately give potential witnesses the hearing dates, and must subpoena witnesses, if necessary, so they are available to testify. Failing to properly notify or subpoena a witness is not good cause to delay the hearing.

PARTICIPANT INFORMATION SHEETS, OR ANY CHANGES THERETO, MUST BE FILED AT LEAST TWO BUSINESS DAYS BEFORE THE DATE OF THE EVENT.

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 if 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. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH by visiting OAH Secure e-file at https://www.applications.dgs.ca.gov/oah/oahsftweb.

If a full and final written settlement agreement is reached after 4:00 PM 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.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed 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 before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

IT IS SO ORDERED.

Cole Dalton

Cole Dalton
Administrative Law Judge
Office of Administrative Hearings