BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

STUDENT,

v.

BELLFLOWER UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020030673

# ORDER FOLLOWING JUNE 15, 2020 PREHEARING CONFERENCE GRANTING REQUEST FOR CONTINUANCE

JUNE 15, 2020

On June 15, 2020, Administrative Law Judge Rommel P. Cruz, 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; and a prehearing conference is called a PHC.

Attorney Tania Whiteleather appeared on behalf of Student. Attorney Marcia Brady appeared on behalf of Bellflower Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

## HEARING DATES, TIMES, AND LOCATION

On June 12, 2020, Student filed a request to continue the due process hearing based on the unavailability of Student's counsel on the dates scheduled for hearing. Student's counsel represented that she is expected to be in a due process hearing for an earlier filed case expected to begin on June 16, 2020, that would likely continue to the following week on the same dates as this matter. On June 12, 2020, Bellflower Unified filed a non-opposition to the request for continuance. Based on the filings of both parties, the parties are available on August 18 and 19, 2020, for hearing.

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 for continuance is granted. All previously scheduled dates are vacated and the case shall proceed as follows:

PREHEARING CONFERENCE will be held on August 7, 2020, at 1:00 PM.

DUE PROCESS HEARING will be held on August 18 and 19, 2020.

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 ALJ.

The parties filed prehearing conference statements and need not file additional statements unless changed circumstances warrant it. Prehearing conference motions are due to OAH no later than three business days before the prehearing conference or with a showing of good cause why it was not timely filed.

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.

## 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 at https://www.applications.dgs.ca.gov/oah/oahsftweb.

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

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.

## FAILURE TO COMPLY

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

## IT IS SO ORDERED.




Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings