BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LONG BEACH UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017050484 ORDER FOLLOWING PREHEARING CONFERENCE, GRANTING MOTION TO AMEND COMPLAINT, AND SETTING ORDER TO SHOW CAUSE RE COSTS

On June 26, 2017, a telephonic prehearing conference was held before Administrative Law Judge Kara Hatfield, Office of Administrative Hearings. Tania Whiteleather, Attorney at Law, appeared on behalf of Student. Cynthia Yount, Attorney at Law, appeared on behalf of Long Beach Unified School District. The PHC was recorded.

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

1. Order Granting Student's Motion to Amend the Complaint. On May 8, 2017, Student filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings, naming Long Beach Unified School District. June 26, 2017, the morning of the scheduled PHC, Student filed an amended Due Process Hearing Request (amended complaint) and Motion to Amend the complaint. Student's and District's attorneys were contacted regarding their failure to filed PHC statements or otherwise notify OAH about the status of the case. District filed a statement of non-opposition to Student's motion to amend the complaint.

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. § 1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

The motion to amend is timely and is granted. The amended complaint shall be deemed filed on the date of this order. All applicable timelines shall be reset as of the date of this order. OAH will issue a scheduling order with the new dates.

2. Order to Show Cause. Neither party filed a PHC statement, as ordered by Paragraph V of the May 11, 2017 Scheduling Order. The parties did not file a stipulation and request to delay exchange of PHC statements, notifying OAH that the PHC might not be

necessary due to negotiations or communications between the parties. Neither party filed a motion or stipulation to continue the prehearing conference and due process hearing. Student filed a motion to amend his complaint after 5:00 p.m. on the Friday before the PHC, but had never advised OAH that such a motion would be filed or that Student sought to continue the PHC to afford time for ruling on the motion to amend. When OAH contacted the parties' attorneys regarding the absence of PHC statements and to inform the parties the PHC would go forward as scheduled, Student's attorney announced she was not going to be available for the PHC due to being aboard an international flight at that time. District filed a statement of non-opposition to Student's motion to amend, which indicated District had been served on Friday, June 23, 2017.

Despite having informed OAH that she would not be available due to being on an international flight at the time scheduled for the PHC, Student's attorney answered the telephone call and participated in the PHC. Because Student's attorney was aware she did not intend to participate in the PHC, but did not request to continue the PHC or otherwise communicate with OAH regarding the status of the case and Student's intention not to proceed with a substantive PHC on June 26, 2017, at 3:00 p.m., Student shall file with OAH and serve to District no later than 5:00 p.m. on July 3, 2017, a response why costs should not be shifted to require Student's attorney to pay for OAH's time preparing for the PHC, and a declaration under penalty of perjury stating why Student did not submit a PHC statement, notify OAH of his intention to move to amend the case and request to continue the PHC, or otherwise communicate with OAH regarding Student's intention not to proceed with a substantive PHC on June 26, 2017. Failure to submit such a response shall be cause for an order to pay for OAH's time preparing for the PHC, this order, and subsequent order to show cause proceedings. If Student submits a response, District may submit a reply by 5:00 p.m. on July 6, 2017.

Because District did not submit a PHC statement, did not file a stipulation and request to delay exchange of PHC statements, notify OAH that the PHC might not be necessary due to negotiations or communications between the parties, and did not in any other manner communicate to OAH District's awareness the parties did not intend to go forward with the PHC and due process hearing as scheduled, District shall file with OAH and serve to Student no later than 5:00 p.m. on July 3, 2017, a response why costs should not be shifted to require District's attorney to pay for OAH's time preparing for the PHC, this order, and subsequent order to show cause proceedings, and a declaration under penalty of perjury stating why District did not submit a PHC statement, notify OAH of its awareness of Student's intention to move to amend the case, request to continue the PHC, or otherwise communicate to OAH regarding the parties' intention not to go forward with the PHC. Failure to submit such a response shall be cause for an order to pay for OAH's time preparing for the PHC. If District submits a response, Student may submit a reply by 5:00 p.m. on July 6, 2017.

A hearing regarding this Order to Show Cause will be held telephonically on July 7, 2017, at 3:00 p.m. OAH will initiate the call.

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 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: June 27, 2017

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Kara Hatfield
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KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings