BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SANTA CLARA COUNTY OFFICE OF EDUCATION, DISCOVERY CHARTER SCHOOL, AND SUNNYVALE SCHOOL DISTRICT.

OAH CASE NUMBER 2019090001

ORDER GRANTING IN PART REQUEST FOR CONTINUANCE AND SETTING PREHEARING CONFERENCE AND DUE PROCESS HEARING DATES

FEBRUARY 19, 2020

On February 13, 2020, the parties jointly filed with the Office of Administrative Hearings a request to continue this matter, based on the fact that counsel for Student is scheduled to be at an out-of-state professional conference on March 3, 4 and 5, 2020, the dates currently scheduled for hearing. The parties request that the hearing be rescheduled for April 28 and 29, 2020.

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 in part. All dates are vacated. The commitment of Student's counsel constitutes good cause to continue the current hearing date, but it does not justify the lengthy continuance sought. This matter has already been delayed several times. It was filed on August 30, 2019. The complaint was amended twice, and then the timeline was reset due to a defect in service of the second amended complaint. OAH issued a

scheduling order on January 16, 2020, setting the current dates, and counsel for Student then waited a month before seeking relief from the conflict caused by his professional commitment. The parties make no attempt to justify further continuance to the end of April. They are cautioned that further requests for continuance of this matter will be disfavored.

This matter will be set as follows:

Prehearing Conference will be held on March 6, 2020, at 10 a.m.

Due Process Hearing will be held on March 17, 18 and 19, 2020. The hearing shall begin at 9:30 a.m. the first day, and at 9:00 a.m. on all other 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. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference or with evidence of good cause why it was not possible to file the motion by that date.

IT IS SO ORDERED.

DocuSigned by:
Charles Marson
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Charles Marson
Administrative Law Judge
Office of Administrative Hearings