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. 2018090007 ORDER FOLLOWING PREHEARING CONFERENCE

On November 30, 2018, a telephonic prehearing conference was held before Administrative Law Judge Chris Butchko, Office of Administrative Hearings. The parties were informed that ALJ Paul Kamoroff remained the ALJ assigned to hear the matter. Ushma Vyas, Attorney at Law, appeared on behalf of Student. Debbie Ferdman, 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. Motion to Continue. On November 28, 2018, Long Beach filed a request for a continuance of the dates in this matter. Student stated at the PHC that she did not oppose the request for a continuance. This is the second request for a continuance in this matter. A continuance to allow mediation was granted by Order dated October 25, 2018.

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.) Speedy resolution of the due process hearing is mandated by law, and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code §56505, subd. (f)(3).)

Long Beach established sufficient good cause for an unopposed continuance. Long Beach has recently retained general counsel that it uses to conduct its hearings. Although it is the third-largest school district in the state of California[1], it now handles its due process hearings in-house and has its Director of Special Education attend all hearings as its representative. The hearing dates set here conflict with another on-going hearing which has priority over this matter, and Long Beach has stated that its counsel and party representative cannot attend both hearings simultaneously. Engagement in conflicting hearings can be good cause for a continuance, provided that granting a continuance does not unreasonably delay

1. https://www.cde.ca.gov/ds/sd/cb/ceflargesmalldist.asp.

the proceedings. Long Beach is seeking a continuance of slightly more than a month, which is not excessive given the fact that the continuance is spread over the winter holidays. The request for a continuance is granted.

All dates in this matter are vacated and continued for good cause and the matter shall be set as follows:

> Continuation of Telephonic PHC: January 11, 2019, at 1:00 p.m. The prehearing conference will be initiated by an administrative law judge. The parties may but need not refile their prehearing conference statements. Please see item 2 for the parties' responsibilities prior to the prehearing conference.
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> Due Process Hearing: January 15, 2019, at 9:30 a.m. and January 16 and 17, 2019, at 9:00 a.m., and continuing day to day, Tuesday through Thursday, as needed at the discretion of the ALJ.

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.

As ordered in the scheduling order, the named local educational agency was to provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities. The named local educational agency failed to certify that it would provide a facility for this case that complied with the law. The local educational agency shall inform OAH within two business days of the date of this order it is able to certify that it will provide a facility that complies with the law.

2. Meet and Confer Obligations. Per the agreement and request of the parties, the PHC is being held on January 11, 2019, for a hearing starting on January 15, 2019. The parties agreed at the PHC that they would exchange witness and exhibit lists, meet and confer on witnesses to shorten their witness lists as much as possible, and prepare a joint schedule of witnesses for each day of hearing in advance of the PHC. The parties shall complete such preparation by January 7, 2019, and be prepared to inform the ALJ of their achievement at the January 11, 2019 prehearing conference.

3. Electronic Recording of PHC and Hearing. Student's motion to make an audio recording of the PHC and hearing was granted, subject to the following conditions: 1) that OAH's recording is the only official recording; 2) that the recording will be turned on and off at the same time as the ALJ's recording, in order to avoid recording conversations while off the record; and 3) that operation of the party's recording mechanism will not be

allowed to delay the PHC or hearing. Permission to record was extended to Long Beach on the same conditions.

4. All Other PHC Matters. All other matters will be taken up at the continued PHC.

5. 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 OAH AT https://www.applications.dgsapps.dgs.ca.gov/oah/oahsftweb .

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.

6. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: November 30, 2018

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Chris Butchko
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CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings