BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019060280

ORDER FOLLOWING PREHEARING CONFERENCE GRANTING REQUEST FOR CONTINUANCE AND SETTING MEDIATION, PREHEARING CONFERENCE, AND DUE PROCESS HEARING; ORDER FOR DEADLINE FOR LONG BEACH UNIFIED TO FILE RESPONSE TO STUDENT'S STAY PUT MOTION

On July 22, 2019, Administrative Law Judge Rommel P. Cruz, Office of Administrative Hearings, held a telephonic prehearing conference. The Administrative Law Judge will be referred to as an ALJ. The Office of Administrative Hearings will be referred to as OAH.

Mother and Father appeared on behalf of Student. Attorney Debra Feldman 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:

RECONSIDERATION AND CONTINUANCE

OAH will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

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. OAH considers all relevant facts and circumstances in determining whether good cause exists to grant an extension. (See Cal. Rules of Court, rule 3.1332(d).)

On July 18, 2019, OAH denied Long Beach Unified's request to continue the dates for the due process hearing. On July 22, 2019, Long Beach Unified filed a motion for reconsideration of the order denying its continuance request. Long Beach Unified seeks to continue the due process hearing in this matter as Long Beach Unified and its counsel are currently scheduled to appear in another, earlier filed due process hearing in OAH case number 2018081089. Student opposed the motion. The motion for reconsideration is granted.

At the PHC, parties indicated a desire to mediate this matter.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request to continue the due process hearing is granted. All dates are vacated. This matter will be set as follows:

Mediation: August 16, 2019, 9:30 AM to 4:30 PM. Mediation shall take place at Tucker, 2221 Argonne Avenue, Long Beach, CA 90815.

Prehearing Conference: October 21, 2019, at 10:00 AM. Prehearing conference statements and prehearing motions shall be filed three business days prior to the PHC.

Due Process Hearing: October 29, 30, and 31, 2019, beginning at 9:30 a.m. on the first day of hearing and 9:00 a.m. on all other days, and continuing 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 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.

STUDENT'S MOTION

On July 12, 2019, Parents on behalf of Student filed a response to Long Beach Unified's Response to Due Process Complaint. In his response, Student states Parents were "continuing with our request of Stay Put default placement for Rogers as the Middle School." At the PHC, Parents inquired as to when OAH would rule on their stay put request. The ALJ accepted Parents' request at the PHC in conjunction with Student's July 12, 2019 response as a motion for stay put. Long Beach Unified shall have until July 25, 2019, to file a response to the stay put motion, at which time OAH will take the motion under submission.

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 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.

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Rommel P. Cruz
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DATED: July 22, 2019

Rommel P. Cruz
Administrative Law Judge
Office of Administrative Hearings