**BEFORE THE**
**OFFICE OF ADMINISTRATIVE HEARINGS**
**STATE OF CALIFORNIA**

# IN THE MATTER OF:

# PARENT ON BEHALF OF STUDENT,

**v.**

# DOWNEY UNIFIED SCHOOL DISTRICT

# OAH CASE NUMBER 2019060369

## ORDER FOLLOWING PREHEARING CONFERENCE; GRANTING REQUEST FOR CONTINUANCE

On July 21, 2019, Administrative Law Judge Judith L. Pasewark, Office of Administrative Hearings held a telephonic prehearing conference. The Administrative Law Judge will be referred to as an ALJ. The prehearing conference will be referred to as a PHC. Gabriella M. Torres, Attorney at Law, appeared on behalf of Student. Calvin Yang, Attorney at Law, appeared on behalf of Downey Unified School District. The PHC was not recorded.

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

## HEARING DATES, TIMES, AND LOCATION

On July 16, 2019, Downey moved to continue the prehearing conference and due process hearing based on the initial hearing dates set by OAH fall during summer break when Downey employees and employees of Student's non-public school are unavailable

to testify. The parties have listed seven Downey employees and four non-public school employees on their respective witness lists. On July 18, 2019, Student filed an opposition to Downey's request for continuance, indicating Student had made it known he intended to move directly to a timely hearing. Student would be prejudiced by a continuance as he contends his current placement is inappropriate. On July 18, 2019, Downey filed a response to Student's opposition.

The motion was timely filed three days prior to the prehearing conference. On July 18, 2019, Student filed an opposition to Downey's request for continuance, indicating Student had made it known he intended to move directly to a timely hearing. Student would be prejudiced by a continuance as he contends his current placement is inappropriate. On July 18, 2019, Downey filed a response to Student's opposition.

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).)

The request for continuance is granted for good cause. All previously scheduled dates are vacated. The case shall proceed as follows:

Prehearing Conference: August 26, 2019 at 10:00a.m.

All other prehearing matters shall be addressed at the August 26, 2019 prehearing conference. All prehearing motions must be filed three business days before the PHC.

Due Process Hearing: September 4, and 5, 2019

The hearing shall begin at 9:30 AM on the first day of the hearing and at 9:00 AM on all other days, unless otherwise ordered. The hearing shall continue day to day at the discretion of the ALJ.

Hearing Location: 11627 Brookshire Avenue, Downey, CA 90241

District has filed the required certification. District shall notify OAH within three days of the date of this order if it is unable to provide facilities that comply with these laws.

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 shall immediately inform OAH in writing if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. If the parties reach a settlement 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 PM the day before the 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. 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.

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

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

## IT IS SO ORDERED.

DATED: July 22, 2019

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Judith Pasewark
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Judith Pasewark
Administrative Law Judge
Office of Administrative Hearings