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 NUMBER 2020100308

# ORDER FOLLOWING PREHEARING CONFERENCE GRANTING REQUEST FOR CONTINUANCE

MARCH 08, 2021

On March 8, 2021, Administrative Law Judge Robert G. Martin, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Tania L. Whiteleather, Attorney at Law, appeared on behalf of Student. Debra K. Ferdman, Attorney at Law, appeared on behalf of Long Beach Unified School District, referred to as Long Beach. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

## REQUEST FOR CONTINUANCE

The parties at the PHC jointly requested a continuance of this matter, on grounds that the hearing dates conflicted with the projected additional hearing dates in an earlier-filed matter, OAH Case no. 2020090441, set for hearing on March 9 through 11, 2021. Attorneys for both parties here are representing the parties in that case.

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).)

After reviewing the parties' request for good cause and considering all relevant facts and circumstances, the ALJ granted the request to continue the hearing dates in this matter. Case No. 2020090441 was filed prior to this case, and the requested continuance of approximately five weeks is not excessive.

All previously scheduled dates are vacated. The case shall proceed as follows:

PHC: April 23, 2021, at 10:00 AM.

The PHC shall be held via videoconference. All other prehearing matters shall be addressed at the April 23, 2021, PHC. All prehearing motions must be filed three business days before the PHC.

Due Process Hearing: May 5 and 6, 2021. May 4, 2021 is not available.

The hearing shall be held via videoconference. All days of hearing shall begin at 9:30 AM, unless otherwise ordered. The hearing shall continue day to day 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 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.



Robert G. Martin
Administrative Law Judge
Office of Administrative Hearings