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. 2018100281 ORDER FOLLOWING PREHEARING CONFERENCE AND ORDER GRANTING CONTINUANCE

On November 19, 2018, a telephonic prehearing conference was held before Administrative Law Judge Chris Butchko, Office of Administrative Hearings. Brian Sciacca, Attorney at Law, appeared on behalf of Student. Cynthia Yount, 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. Request for a Continuance. On November 13, 2018, Long Beach filed a request for a continuance of the dates in this matter. This is the second request for a continuance in this matter, OAH having denied an earlier request without prejudice to refiling. Student filed an opposition to the renewed request on November 16, 2018. Student stated that she did not generally oppose a request for a continuance, but considered the requested continuance to February 12, 2019, to be unnecessarily long.

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 good cause for a continuance. A matter with priority over this one is set for hearing on the dates scheduled here. Engagement in conflicting hearings is good cause for a first continuance, provided that granting a continuance does not unreasonably delay the proceedings. Long Beach provided a statement setting out its schedule for hearing, which was reviewed by the ALJ with input by both counsel. Alternate dates were considered, and the parties agreed that January 29-31, 2019, was an acceptable span for scheduling the hearing. Although it represents a continuance of approximately two months, it does not unnecessarily or unduly delay the hearing, particularly given the upcoming holidays periods. The request for a continuance is granted.

Student declined the opportunity to mediate the matter.

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.

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 18, 2019, at 10:00 a.m. The prehearing conference will be initiated by an administrative law judge. The parties need not refile their prehearing conference statements.

Due Process Hearing: January 29, 2019, at 9:30 a.m. and January 30 and 31, 2019, at 9:00 a.m., and continuing day to day, Tuesday through Thursday, as needed at the discretion of the ALJ.

2. All other PHC matters shall be addressed at the continued PHC.

3. 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 FAX 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.

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

IT IS SO ORDERED.

DATE: November 19, 2018

DocuSigned by:
Chris Butchko
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CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings