BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024010524

ORDER FOLLOWING PREHEARING CONFERENCE GRANTING REQUEST FOR CONTINUANCE

JULY 19, 2024

On July 19, 2024, Administrative Law Judge Kara Hatfield, 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.

Jovi Usude, Attorney at Law, appeared on behalf of Student. Brian Davenport, Attorney at Law, appeared on behalf of Los Angeles Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

Student orally moved to continue the prehearing conference and due process hearing based on Student's attorney recently accepting the case and requiring additional time to prepare for the due process hearing. Student's attorney accepted the representation on July 2, 2024, and requested records from Student's prior attorney and from Parent. Student's attorney has not received all necessary records to be prepared for hearing on the currently scheduled date of July 30, 2024. Student requested 30 days to afford his attorney time to adequately prepare for the due process hearing. Student failed to file a PHC statement because his attorney did not yet have necessary documents to competently represent Student. While Student's attorney has been waiting for all necessary documents, he has engaged in settlement discussions with Los Angeles Unified's attorney and put effort into resolution instead of a prehearing motion to continue. The motion was not filed three days before the PHC. Student established good cause for orally stating the motion at the PHC.

Los Angeles Unified opposed the motion on the grounds that Student's attorney accepted representation knowing the hearing was starting in less than a month, did not file a PHC statement, and did not move to continue the hearing. Los Angeles has expended effort to prepare witnesses for the currently scheduled hearing dates and objected to a continuance. However, Los Angeles Unified cooperated to find mutually agreeable prehearing conference and hearing dates for a continuance of four weeks.

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, to afford Student's attorney the opportunity to receive all necessary records and prepare for hearing. Due to the age of this case, filed January 19, 2024, OAH does not contemplate any further continuance. All previously scheduled dates are vacated. The case shall proceed as follows:

PREHEARING CONFERENCE will be held on August 19, 2024, at 3:00 PM.

All other prehearing matters shall be addressed at the August 19, 2024, PHC. All prehearing motions must be filed three business days before the PHC.

DUE PROCESS HEARING will be held on August 27 and 28, 2024. The parties shall be prepared to discuss additional hearing dates during the

August 19, 2024, PHC, including Los Angeles Unified's attorney's unavailability on August 29 and 30, 2024.

The hearing will be conducted via telephone or videoconference and shall begin at 9:30 AM and end at 3:30 PM on all days, 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 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.

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the PHC.

IT IS SO ORDERED.

Kara Hatfield

Kara Hatfield
Administrative Law Judge
Office of Administrative Hearings