BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

LANCASTER SCHOOL DISTRICT.

OAH CASE NUMBER 2023090566

ORDER FOLLOWING PREHEARING CONFERENCE SETTING HEARING ON ORDER TO SHOW CAUSE, AND CONTINUING PREHEARING CONFERENCE AND HEARING BY VIDEOCONFERENCE

OCTOBER 31, 2023

On October 30, 2023, Administrative Law Judge Sabrina Kong, 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.

Student's attorney of record, Leon Ozeran, did not appear on Student's behalf at the PHC. The ALJ waited 10 minutes for Student's attorney before proceeding with the

PHC. Attorney Angela Gordon appeared on Lancaster School District's, called Lancaster, behalf. The PHC was recorded.

ORDER TO SHOW CAUSE HEARING

Attorney Ozeran did not file a PHC statement and did not appear for the October 30, 2023, 1:00 PM PHC.

Student filed a due process hearing request, called a complaint, on September 20, 2023. On September 21, 2023, OAH sent a Scheduling Order Setting Telephonic PHC and Due Process Hearing and General Orders to the parties. The Scheduling Order ordered the parties to file PHC statements stating a concise statement of the issues raised in the complaint that remain to be decided at the due process hearing and to appear at 1:00 PM on October 30, 2023 for a PHC.

It is critical for parties to follow orders issued by OAH and participate in advancing this case to hearing or resolution. Student's non-compliance with OAH's procedures caused OAH to incur unnecessary expenses. All parties are responsible for understanding and following OAH's procedures. Failure to do so may result in the complaint being dismissed, or in OAH's costs being shifted to the noncomplying party.

Because Attorney Ozeran failed to file a PHC statement and appear at the October 30, 2023 PHC, the ALJ set a hearing for an Order to Show Cause why Student's complaint should not be dismissed for Student's failure to participate, prosecute and/or advance this matter, and why Student should not be ordered to pay OAH's costs incurred in connection with the October 30, 2023 PHC.

Student is ordered to file with OAH, and serve on Lancaster, no later than 5:00 PM on November 1, 2023, a written statement under penalty of perjury explaining why:

1. Student failed to file a PHC Statement prior to the October 30, 2023 PHC;
2. Student failed to appear at the October 30, 2023 PHC;
3. Student's complaint should not be dismissed; and
4. OAH's costs incurred in connection with the October 30, 2023 PHC should not be shifted to Student's Attorney for payment.

Lancaster may file an opposition/response to Student's statement regarding the Order to Show Cause with OAH, and serve on Student, no later than 5:00 PM on November 3, 2023.

The hearing of the Order to Show Cause of the matters described above shall be held on November 6, 2023, at 1:00 PM.

CONTINUANCE OF PHC, AND DUE PROCESS HEARING

If this case is not dismissed at the November 6, 2023 Order to Show Cause hearing, the PHC will take place immediately following such hearing. Further, the due process hearing is continued to November 14, 15, and 16, 2023, beginning at 9:30 AM each day.

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 ALJ found good cause to continue the due process hearing for a week, so Student's Attorney has an opportunity to explain the matters described above at the Order to Show Cause Hearing.

HEARING DATES, TIMES, AND LOCATION

The hearing will take place on November 14, 15, and 16, 2023, and continue day to day at the discretion of the ALJ. The hearing shall begin at 9:30 AM each day and generally end at 3:30 PM, unless otherwise ordered. PHC statements and motions are due to OAH no later than three business days before the prehearing conference or with a showing of good cause why it was not timely filed.

PARTICIPANT INFORMATION SHEETS FOR THE PHC AND DUE PROCESS HEARING MUST BE FILED TWO BUSINESS DAYS PRIOR TO THE DATE OF THE SCHEDULED EVENT.

OAH is authorized to conduct due process hearings by videoconference or telephone. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) OAH will conduct the due process hearing by videoconference using the Zoom application. Unless otherwise ordered, participants are required to appear by videoconference using computer or device with video capability and Zoom.

The parties shall immediately notify all potential witnesses of the hearing dates and shall subpoena witnesses, if necessary, to ensure that the witnesses will appear to testify. A party's failure to notify or subpoena a witness to testify will not be considered good cause to continue the hearing. Instructions for issuing and responding to subpoenas and optional forms for subpoenas can be found on the website at https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena.

FAILURE TO COMPLY

The 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.

Sabrina Kong

Sabrina Kong

Administrative Law Judge

Office of Administrative Hearings