BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2022040873

ORDER FOLLOWING PREHEARING CONFERENCE FOR HEARING BY VIDEOCONFERENCE GRANTING CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT'S REQUEST FOR CONTINUANCE OF DUE PROCESS HEARING

JULY 11, 2022

On July 11, 2022, Administrative Law Judge Jennifer Kelly, 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.

Robert Burgermeister, Attorney at Law, appeared on behalf of Student. Sundee Johnson, Attorney at Law, appeared on behalf of Chaffey Joint Union High School

District, referred to as Chaffey. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

The due process hearing currently is scheduled for July 19, 20, and 21, 2022.

On June 2, 2022, Chaffey and Sky Mountain Charter School jointly moved to continue the prehearing videoconference and due process hearing based on the unavailability of counsel and various witnesses. Student opposed the motion on the grounds it was neither timely nor supported by good cause.

OAH held the initial prehearing videoconference in this matter on June 3, 2022. OAH determined good cause existed to continue the due process hearing and issued an Order Following Prehearing Conference Granting Request for Continuance. OAH continued the prehearing videoconference until July 11, 2022, and the due process hearing to July 19 through July 21, 2022.

Student entered into a settlement agreement with Sky Mountain Charter School and filed a request for dismissal on June 21, 2022.

On July 8, 2022, Chaffey filed a second request to continue the due process hearing supported by sworn declarations. The basis for Chaffey's request was that its director of special education will be on vacation July 19 through 21, 2022.

Student filed an opposition to the motion to continue on July 11, 2022.

At the PHC, the ALJ discussed Chaffey's request to continue the due process hearing with the parties. Chaffey's motion was not filed three business days prior to the prehearing conference. Chaffey established good cause for failing to timely file the

request for continuance. More particularly, Chaffey was unaware the case dismissal filed by Student on June 21, 2022 applied only to Sky Mountain Charter School. Student did not serve a copy of the case dismissal on Chaffey. Chaffey received the amended notice of case dismissal as to Sky Mountain Charter only on July 7, 2022. Upon receiving the amended notice of case dismissal, Chaffey filed the request for continuance of the due process hearing the following day.

Further, Chaffey established that at the time of the June 3, 2022 PHC it requested the due process hearing be continued until late August or early September 2022 on the basis its witnesses and counsel were not available June 14 through 16, 2022; the date of the originally scheduled due process hearing. Upon discussion with the ALJ at the June 3, 2022 PHC, counsel for both Chaffey and Student determined they were available for hearing on June 19 through 21, 2022, subject to availability of their clients. At the time of the June 3, 2022 PHC Chaffey was unaware of the unavailability of its director of special education on June 19 through 21, 2022. Chaffey did not file a request for continuance upon initially learning of the unavailability of its director of special education on the mistaken belief the case had been dismissed in its entirety.

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).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. In light of the above circumstances, Chaffey's continuance request is granted for good cause. All previously scheduled dates are vacated. The case shall proceed as follows:

PREHEARING VIDEOCONFERENCE: July 29, 2022, at 3:00 pm.

DUE PROCESS HEARING BY VIDEOCONFERENCE: August 9, 10, and 11, 2022. The hearing shall begin at 9:30 am on all days unless otherwise ordered. The hearing shall continue day to day, as needed, at the discretion of the ALJ.

All other prehearing matters shall be addressed at the July 29, 2022 PHC. All prehearing motions must be filed three business days before the PHC.

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

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. Any discussion and conversation not referenced in this Order is not binding on the ALJ conducting the hearing and may not be relied upon by the parties. The parties should be aware that, at hearing, the ALJ conducting the hearing has discretion to reconsider any part of this Order.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings