BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2019090129

ORDER FOLLOWING PREHEARING CONFERENCE AND GRANTING REQUEST FOR MEDIATION AND CONTINUANCE OF DUE PROCESS HEARING

FEBRUARY 21, 2020

On February 21, 2020, Administrative Law Judge Laurie Gorsline, Office of Administrative Hearings, held a telephonic prehearing conference. The Administrative Law Judge is called an ALJ; the Office of Administrative Hearings is called OAH; and a prehearing conference is called a PHC.

Tania Whiteleather, Attorney at Law, appeared on behalf of Student. Tiffany Santos, Attorney at Law, appeared on behalf of Chaffey Joint Union High School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

DUE PROCESS HEARING

On February 18, 2020, Student filed a motion to continue the due process hearing because she has a conference scheduled during the week of March 2, 2020, the same week as currently scheduled due process hearing. On February 18, 2020, Chaffey filed a notice of non-opposition, agreeing to the June 2020 continuance dates proposed by Student's counsel. At the PHC, as reflected in the record, the parties discussed the length of the requested continuance. Student indicated that there is a pending independent educational assessment which should be completed within the next six weeks and that she has a trial scheduled in April 2020. Chaffey's counsel stated that Parent will be out town in May 2020 and that counsel has other calendar conflicts between February and June 2020. Student's counsel expressed a willingness to mediate the claims in the amended complaint and suggested late April 2020 for mediation. Chaffey's counsel agreed to mediation and both sides agreed to an April 27, 2020 mediation date.

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. OAH considers all relevant facts and circumstances in determining whether good cause exists to grant an extension. (See Cal. Rules of Court, rule 3.1332(d).)

The ALJ considered all of the relevant facts and circumstances, including the arguments made by counsel during the PHC. Good cause having been established, the requested continuance is granted.

The mediation shall take place on April 27, 2020, from 9:30 AM to 4:30 PM. The mediation will be held at the West End SELPA, located at 8265 Aspen Avenue, Suite 200, Rancho Cucamonga, California 91730. The parties shall promptly determine if the mediation date agreed to at the PHC conflicts with their clients' schedules and to promptly request a new mediation date from OAH.

The telephonic PHC is continued to June 8, 2020 at 1:00 PM. The ALJ will call the parties at that time. PHC statements and motions, including motions to continue the hearing, are due to OAH no later than three business days before the PHC or with a showing of good cause why it was not timely filed. Student's counsel is ordered to timely file a new PHC statement clarifying the time periods for each of Student's issues.

The due process hearing will take place on June 16 through June 18, 2020, and continue day to day at the discretion of the ALJ. The hearing shall begin at 9:30 AM on the first day and at 9:00 AM on all other days, unless otherwise ordered.

HEARING LOCATION

The hearing will be held at the West End SELPA, located at 8265 Aspen Avenue, Suite 200, Rancho Cucamonga, California 91730.

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.

District facilities shall fully comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the

Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities. OAH requires Districts to file written certification that the facilities provided comply with these laws.

Chaffey did not file the required certification. Chaffey must file the required certification within three business days of this Order and provide facilities that comply with these laws. Chaffey shall notify OAH within three business days of the date of this Order if it is unable to provide facilities that comply with the laws governing accessibility of government facilities to persons with disabilities.

DISMISSAL OF CLAIMS OUTSIDE OAH JURISDICTION

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education", and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

In the claim labeled Issue 15 in the amended complaint, Student alleges Chaffey violated Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and California civil rights laws. However, OAH does not have jurisdiction to adjudicate claims based on Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, or California civil rights laws. Accordingly, the claim labeled Issue 15 in Student's amended complaint is dismissed. The matter shall proceed as scheduled as to all other claims.

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 if 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. 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.

If a full and final written settlement agreement is reached after 4:00 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.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed 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

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

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Laurie Gorsline
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Laurie Gorsline
Administrative Law Judge
Office of Administrative Hearings