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 2019071112

ORDER FOLLOWING PREHEARING CONFERENCE GRANTING REQUEST FOR CONTINUANCE

On September 6, 2019, Administrative Law Judge Alexa Hohensee, Office of Administrative Hearings, referred to as OAH, 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. Parent, Attorney at Law, appeared on behalf of Student. Patrick Balucan, Attorney at Law, appeared on behalf of Los Angeles unified School District. The PHC was recorded.

The ALJ granted Student's motion for permission to record the PHC subject to the following conditions:

- the OAH recording is the only official recording;
- the parties shall turn the recording device on and off at the same time that the ALJ is on and off the record;

- the recording shall not be shared with any non-party, possible witness, or through social media;
- The parties shall not use the recording in any subsequent due process hearing;
- the recording is subject to the same confidentiality as the due process hearing; and
- the parties shall dispose of the unofficial recording when the time for filing an appeal has passed or, in the event of an appeal, when the time for submission of the record on appeal has passed.

Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

Parent moved to continue the prehearing conference and due process hearing based on a family emergency. Los Angeles did not oppose the motion, and the parties proposed mutually agreed dates for the continuance.

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. All previously scheduled dates are vacated. The case shall proceed as follows:

Prehearing Conference: October 18, 2019 at 1:00 PM

All other prehearing matters shall be addressed at the DATE prehearing conference. All prehearing motions must be filed three business days before the PHC. The parties are not required to file additional prehearing conference statements, but shall do so if there is a change in information contained in previous filings.

Due Process Hearing: October 29, 2019 through October 31, 2019.

The hearing shall begin at 9:30 AM on the first day of the hearing and at 9:00 AM on all other days, unless otherwise ordered. Hearing days will end at 4:30 PM, unless otherwise ordered. The hearing shall continue day to day at the discretion of the ALJ.

Hearing Location: Office of Administrative Hearings, 15350 Sherman Way, Suite 300, Van Nuys, CA 91406

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.

Los Angeles filed its response to Student's complaint on August 22, 2019. (*M.C. v. Antelope Valley Unified School Dist.* (9th Cir. 2017) 858 F.3d 1189, 1199-1200.)

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.

IT IS SO ORDERED.

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Alexa Hohensee
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DATED: September 9, 2019

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings