BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN DIEGO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018030762 ORDER FOLLOWING PREHEARING CONFERENCE; GRANTING CONTINUANCE AND SETTING PREHEARING CONFERENCE AND DUE PROCESS HEARING

On May 4, 2018, a telephonic prehearing conference was held before Administrative Law Judge Tara Doss, Office of Administrative Hearings. Parent appeared on behalf of Student. Jonathan Read, Attorney at Law, appeared on behalf of District. The PHC was recorded.

Based upon District's PHC statement and discussion with the parties during the PHC, the ALJ issues the following order:

1. Motion to Continue and Request to Change Due Process Hearing Location.

On May 4, 2018, prior to the PHC, Student filed a Request for Continuance of the Due Process Hearing. District did not oppose Student's continuance request. This was the first continuance requested in this matter.

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. (See 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; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

OAH has reviewed Student's request and considered all relevant facts and circumstances. Student's Request for Continuance is granted. During the PHC, the parties jointly selected alternative hearing dates. All dates are vacated and this matter shall be set as follows:

Telephonic Prehearing Conference:	**May 14, 2018, at 10:00 a.m.**
Due Process Hearing:	**May 22, 23, and 24, 2018, at 9:30 a.m. on the first day, and 9:00 a.m. on each following day, continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.**

On April 30, 2018, District filed a Request to Change Location of Due Process Hearing. Student did not oppose District's request. Accordingly, the due process hearing will take place at the **OAH offices located at 1350 Front Street, Suite 3005, San Diego, CA 92101**.

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 dates or properly subpoenaed, as applicable.

2. Motion to Dismiss.

On May 1, 2018, District filed a Motion to Dismiss Issues Five and Six in Student's complaint.[1] District contended the issues are outside of OAH jurisdiction. Specifically, District contended issues related to retaliation and bullying, and gifted and talented instruction, are outside of OAH jurisdiction. Student did not respond to District's motion.

Pursuant to the Individuals with Disabilities Education Act, any party has the opportunity to present a complaint with respect to any matter relating to the identification, evaluation, or educational placement of a child, or the provision of a free appropriate public education to such child. (20 U.S.C. § 1415(b)(6)(A).) Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.), special

[1] District's motion identified the challenged issues as Issues Five and Six. However, the challenged issues appear as Issues Three and Four, respectively, in Student's complaint, and will be referred to as such herein.

education law does not provide for a summary judgment procedure, which would require a ruling on the merits of the complaint, prior to an evidentiary hearing.

Issue Three of Student's complaint involves whether Student has been denied educational benefit as a result of bullying from teachers and other students, and retaliation against Parent. Issue Four involves District's failure to offer Student gifted and talented differentiated instruction. OAH does not provide for a summary judgement procedure. Thus, OAH is not willing to dismiss Issues Three and Four of Student's complaint before allowing Student an opportunity to present evidence at hearing on how these issues relate to the identification, evaluation, educational placement, or the provision of a free appropriate public education to Student.

According, District's Motion to Dismiss is denied.

3. Other Motions. Student anticipates filing a Motion to Amend/Amended Complaint in this matter. The ALJ informed Parent that a ruling cannot be made on whether Parent may file an Amended Complaint before a Motion to Amend the Complaint and an Amended Complaint are filed with OAH and served upon District.

4. Other PHC Matters. All other PHC matters will be discussed during the PHC on May 14, 2018.

5. 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 should 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.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 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. THE PARTIES SHOULD SIMULTANEOUSLY EMAIL THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT https://www.dgsapps.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 the evening prior to the hearing or the morning of the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement as noted above, the parties shall submit a request for a status conference and provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

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

IT IS SO ORDERED.

DATE: May 4, 2018

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Tara Doss
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TARA DOSS
Administrative Law Judge
Office of Administrative Hearings