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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 2020010595

ORDER FOLLOWING PREHEARING CONFERENCE GRANTING REQUEST FOR CONTINUANCE

JULY 13, 2020

On July 13, 2020, Administrative Law Judge Deborah Myers-Cregar, Office of Administrative Hearings 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. Diana Renteria, Attorney at Law, Sheila Bayne, Attorney at Law, and James Peters, advocate, appeared on behalf of Student. Jonathan Read, Attorney at Law, and Julaina Mascari, 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:

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MOTION TO CONTINUE DUE PROCESS HEARING

The Due Process Hearing is scheduled to begin on July 21, 2020, and continue day to day, until completed. On July 7, 2020, Chaffey Joint Union High School District moved to continue the prehearing conference and due process hearing. Student filed an opposition on July 13, 2020.

During the prehearing conference, Chaffey Union asserted it is currently engaged in another ongoing due process hearing, OAH Case Number 2019090129. It's extensive moving papers discussed how district representatives and witnesses would be unable to be engaged in both hearings simultaneously. Student asserted that the motion was not timely, that the other matter had not actually started, that good cause was not shown, and that a continuance beyond August 11, 2020 would cause an unnecessary delay.

The motion was timely filed three days prior to the prehearing conference.

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

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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).)

Here, good cause to continue the PHC and the Due Process Hearing was shown. The other hearing that Chaffey Joint Union was involved in had started in July and was expected to continue into August 2020.

The request for continuance is granted for good cause. All previously scheduled dates are vacated. The case shall proceed as follows:

PREHEARING CONFERENCE will be held on August 17, 2020, at 1:00 PM.

Prehearing conference 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.

DUE PROCESS HEARING will be held on September 1, through September 3, 2020, and shall continue day to day at the discretion of the ALJ. The hearing will begin at 9:30 AM each day and generally end at 3:30 PM, unless otherwise ordered.

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.

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OAH is authorized to conduct due process hearings by videoconference or telephone. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) Based on state and federal guidance to address safety procedures due to the novel coronavirus, COVID-19, OAH will conduct the due process hearing by videoconference using the Microsoft Teams application. Unless otherwise ordered, participants are required to appear by videoconference using a webcam and Microsoft Teams.

Parties are responsible for ensuring that all participants are familiar with and follow the Instructions for Joining the Online Due Process Hearing provided with this Order. Participants that have not previously used the MS Teams platform, may also find informative videos available like the one at this link from Microsoft: https://support.office.com/en-us/article/join-a-teams-meeting-078e9868-f1aa-4414-8bb9-ee88e9236ee4.

UPDATED PARTICIPANT INFORMATION FORM

Both parties shall have an ongoing obligation to ensure that the information on the Participant Information Form filed with OAH is current, and they shall file an updated Form as necessary. The ongoing obligation to ensure that the Participant Information Form filed with OAH is current does not change the parties' statutory obligation to timely disclose their witnesses to the other party(s) at least five business days prior to hearing. The parties must file an updated Participant Information Form to inform OAH of any changes, additions, or deletions, and include the required information no later than 5:00 PM at least two business days before the first day of hearing.

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Any contact information provided by District shall be used by Student for the limited purpose of issuing subpoenas or for contacting the witness(es) for purposes of attending the hearing and shall not be disclosed to any other person(s).

VIDEO RECORDING

No party, witness or anyone else may make any video recording of any part of the proceedings or stream live through any means.

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.

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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.



Deborah Myers-Cregar

Administrative Law Judge

Office of Administrative Hearings