BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

DOWNEY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2025010823

ORDER GRANTING REQUEST FOR CONTINUANCE AND SETTING DUE PROCESS HEARING

MARCH 18, 2025

On March 18, 2025, Administrative Law Judge Tiffany Gilmartin, Office of Administrative Hearings, convened the first day of a scheduled Due Process Hearing. Father appeared on behalf of Student. Stepmother also appeared on Student's behalf. Attorney Deborah Ettinger appeared on behalf of Downey Unified School District. Jayro Roman, Program Administrator for the Office of Student appeared on Downey Unified. The hearing was recorded.

On March 17, 2025, Student filed a request to continue the due process hearing with the Office of Administrative Hearings, OAH. As the filing was received the day

before the hearing, both parties were ordered to appear. Downey opposed the continuance and both parties were argued the motion on the record.

Student contends the hearing should be continued because his father needs to consult with tribal council to ensure Student's education is culturally aligned with the values of his tribe. Father is also pursuing education rights for Student's stepmother and primary caregiver, and the family is waiting for the results of a privately obtained assessment.

Student's tribal heritage and outstanding privately obtained assessment were facts known to Father prior to filing this request for due process on January 23, 2025. Student raised for the first time his interest in obtaining education rights for his stepmother and primary caregiver. Student provided no evidence he has taken any affirmative steps to pursue education rights for stepmother in the Family Court. Good case is found to allow a short continuance for Student to demonstrate he has taken affirmative steps to obtain a determination of education rights for stepmother.

OAH must conduct a due process hearing and issue a decision within 45 days of receiving the due process complaint, unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Resolving the due process hearing quickly is legally required. Hearings may only be continued if "good cause" is established. (Ed. Code, § 56505, subd. (f)(3).) OAH is guided by the Administrative Procedure Act and the California Rules of Court when ruling on continuance motions. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.)

Good cause to continue a hearing may include:

- An essential lay or expert witness is unavailable because of death, illness, or other excusable circumstances;

- A party is unavailable because of death, illness, or other excusable circumstances;
- A party's attorney is unavailable because of death, illness, or other excusable circumstances;
- A new attorney substitutes in, but only if the party establishes that the substitution is required in the interests of justice;
- A new party is added, and the new party has not had a reasonable opportunity to prepare for trial, or other parties have not had a reasonable opportunity to prepare for trial regarding the new party's involvement;
- A party is unable to obtain essential testimony, documents, or other material evidence despite diligent efforts; or
- The case has a significant and unexpected change which makes the case not ready for trial.

Generally, continuances are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

The request is granted. All previously scheduled dates are vacated.

DUE PROCESS HEARING will be held on May 6, 7, and 8, 2025.

EXHIBITS

The parties shall serve their exhibits on each other in compliance with Education Code section 56505, subdivision (e)(7). The parties shall upload their exhibits electronically according to the Order Setting Procedures for Filing Exhibits Electronically. Timely uploading electronic hearing exhibits five business days before the first day of hearing constitutes that party's timely exchange of evidence in compliance with

Education Code section 56505, subdivision (e)(7). If further assistance is needed, please contact OAH at OAHSEOps@dgs.ca.gov.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not timely exchanged as required by Education Code section 56505, subdivision (e)(7) shall not be admitted into evidence at the hearing unless the ALJ rules that it is admissible.

The due process hearing will be held by videoconference or telephone, unless otherwise ordered. The due process hearing will begin at 9:30 AM on all days, and generally end at 3:30 PM, unless otherwise ordered. The hearing will continue day to day, as needed, Mondays and Fridays included, at the discretion of the Administrative Law Judge.

The parties must immediately give potential witnesses the hearing dates, and must subpoena witnesses, if necessary, so they are available to testify. Failing to properly notify or subpoena a witness is not good cause to delay the hearing.

MEET AND CONFER

The parties must meet and confer no later than close of business on April 30, 2025. Parties are to discuss witness scheduling and identify any Downey employees Student intends to call as a witness.

IT IS SO ORDERED.

Tiffany Gilmartin

Tiffany Gilmartin

Administrative Law Judge

Office of Administrative Hearings