BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. FOLSOM CORDOVA UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013040098 ORDER FOLLOWING PREHEARING CONFERENCE, GRANTING CONTINUANCE AND SETTING NEW PREHEARING CONFERENCE AND HEARING DATES, AND DENYING MOTION FOR STAY PUT

On September 9, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Theresa Ravandi, Office of Administrative Hearings (OAH). Parents appeared on behalf of Student (Student). Anne Sherlock, Attorney at Law, appeared on behalf of the Folsom Cordova Unified School District (District). The PHC was recorded.

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

1. Motion for Continuance. This matter is currently set for hearing beginning on September 17, 2013. Student requested a continuance of the PHC and hearing dates in order to allow for additional time to prepare for hearing and to respond to the District's Motion to Dismiss Issues and Motion to Consolidate which were filed on September 6, 2013. The District did not oppose a continuance. This is the second request to continue 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. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

Student has established good cause for a brief continuance and the motion is granted. All dates are vacated and the matter will be set as follows:

Prehearing Conference:	September 20, 2013, at 3:00 p.m.
Due Process Hearing:	October 2, 2013, at 9:30 a.m., October 3, 2013, at 9:00 a.m., October 7, 2013, at 1:30 p.m. and October 8-9, 2013, at 9:00 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ.

The hearing will be held at the District's offices located at 1965 Birkmont Drive, Rancho Cordova, California 95742.

2. Notice to Witnesses. 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.

3. Pending Motions.

a) *Student's Motion for Stay Put*.

On September 5, 2013, Student filed a Motion for Stay Put. On September 9, 2013, the District filed an opposition on the grounds that there is no dispute regarding stay put because the District is implementing Student's last agreed upon and implemented individualized education program (IEP) dated April 27, 2012.

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's IEP, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

Student is entitled to remain in his last agreed upon and implemented placement and receive all related services indicated while a dispute is pending, and an order for stay put is generally not required unless a dispute exists. The District indicates through the sworn declaration of its counsel that the District is implementing the last agreed upon and implemented IEP for Student which was developed on April 27, 2012. Accordingly, Student's motion for stay put is denied. If there is a dispute that exists as to placement or services, Student may file a request with greater specificity as to the nature of the dispute and the terms of stay put.

b) *District's Motion to Dismiss Issues*:

The District filed a Motion to Dismiss Issues on September 6, 2013, based upon the statute of limitations and the parties' execution of a written settlement agreement on May 9, 2013, which it alleges the parties fully settled all assessment claims. Student's request to extend time to respond to this motion is granted in part. Student has until Monday, September 16, 2013, to file a written response.[1] Student's request to be allowed to disclose facts pertaining to the confidential mediation discussions is denied. However, both parties are ordered to provide the ALJ with a copy of the May 9, 2013 interim agreement regarding the settlement of assessment issues pertaining to Student's case.

c) *District's Motion for Consolidation:*

On September 6, 2013, the District filed its own request for due process along with a Motion to Consolidate this matter with the District-filed case. Student's request to extend time to respond to this motion is granted in part. Student has until September 16, 2013, to file a written response.

4. Other Matters. All other matters relevant to preparing for hearing, including clarification of issues and identification of witnesses and exhibits, will be addressed at the PHC on September 20, 2013. All other orders contained in the OAH Scheduling Order dated May 13, 2013, remain in effect.

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. Dates for the PHC and hearing will not be cancelled until a letter of withdrawal or request for dismissal with the signature page of a signed agreement has been received by OAH.

IT IS SO ORDERED.

Dated: September 10, 2013

/s/
THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

[1] During the PHC, the ALJ originally ordered Student to file her response to the District's motions by September 11, 2013, three business days from the date of filing. After the recorded potion of the PHC, the ALJ reconvened the PHC off the record and indicated that she intended to allow Student additional time to respond until September 16, 2013. The District did not object.