BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ATWATER ELEMENTARY SCHOOL DISTRICT.	OAH CASE NO. 2014010194 ORDER FOLLOWING PREHEARING CONFERENCE, AND CONTINUING PREHEARING CONFERENCE AND FURTHER ORDER REGARDING IN CAMERA REVIEW FOR SUBPOENA DUCES TECUM.

On March 17, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Rebecca Freie, Office of Administrative Hearings (OAH). Daniel Shaw, Attorney at Law, appeared on behalf of Student. Marcy Gutierrez, Attorney at Law, appeared on behalf of Atwater Elementary School District and Merced County Office of Education (Districts). The PHC was recorded.

Continuance

The parties jointly moved for a continuance of the PHC to March 21, 2014. 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).)

Good cause is shown to continue the PHC because the parties are circulating an interim settlement agreement that calls for Student to be independently assessed. If the agreement is fully signed, the hearing will also need to be continued so that the parties have an opportunity to mediate the case once the independent assessments are completed.

However, the parties were unable to coordinate their calendars at the time of the PHC to determine new dates for mediation, hearing, and a PHC date within two weeks of the new hearing date. Therefore, the PHC is continued on joint motion of the parties and shall take place on March 21, 2014, at 10:00 a.m., at which time the parties shall be prepared to stipulate to dates for a mediation following completion of the independent assessments, and dates for a new PHC and hearing. Since this matter was originally filed in January 2014, OAH, the parties shall find mutually agreeable dates in June 2014 for the rescheduled PHC and hearing.

In Camera Review

On February 14, 2014, Districts submitted to OAH, for an in camera review, four DVD's containing surveillance footage from four school bus rides Student took in November and December 2012, that were the subject of Districts' motion to quash a subpoena duces tecum issued by Student. A fifth DVD was also sent with the package, purportedly containing a software program that must be downloaded before the DVD's can be viewed on a computer. It appears this fifth DVD was copied from an original DVD containing the software. Districts did not submit instructions for the downloading of the program on the fifth DVD, and the ALJ was unsuccessful in attempting to download the program from the fifth DVD. Accordingly, no later than 5:00 p.m., on March 19, 2014, Districts shall forward to OAH the original DVD containing the software program, and/or detailed instructions for downloading the software onto another computer.

IT IS SO ORDERED.

DATE: March 17, 2014

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings