BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN FRANCISCO UNIFIED SCHOOL DISTRICT, BERKELEY UNIFIED SCHOOL DISTRICT, AND OAKLEY UNION ELEMENTARY SCHOOL DISTRICT	OAH CASE NO. 2013030851 ORDER RESOLVING ORDER TO SHOW CAUSE, FOLLOWING PREHEARING CONFERENCE, GRANTING BIFURCATION, AND GRANTING PARTIAL CONTINUANCE

On August 23, 2013, a telephonic order to show cause conference and a prehearing conference (PHC) in this matter were held before Administrative Law Judge (ALJ) Deidre L. Johnson, Office of Administrative Hearings (OAH). Attorney Sheila L. Brogna appeared on behalf of Student and Parent (Student). Attorney Damara Moore appeared on behalf of the San Francisco Unified School District (SFUSD). Attorney Jan E. Tomsky appeared on behalf of Berkeley Unified School District (BUSD) and Oakley Union Elementary School District (OUESD). The proceedings were recorded.

1. Order to Show Cause: In connection with a PHC on August 19, 2013, OAH issued an order for Student and Parent to show cause why the case should not be dismissed for failure to participate in, prosecute or advance Student's case to a due process hearing. In compliance with the order, Student timely filed a written response addressing why he did not file a PHC statement and that he intends to go forward to a hearing. Student retained an attorney and also filed a written PHC statement and a motion for a continuance.

Student and Parent demonstrated by their actions, responses, and participation in this PHC that they intend to go forward to participate in preparing for hearing and established cause why the case should not be dismissed. Therefore, the order to show cause was resolved without sanctions, and the PHC was then conducted.

2. Motions to Bifurcate: During the PHC on August 19, 2013, the school districts each moved to bifurcate Student's case into three separate hearings. During that PHC and in the order following it, the undersigned ALJ issued a tentative ruling granting the motions on the grounds that Student's case against each district was distinct, with no common or overlapping questions of fact or law, and did not otherwise establish a basis for necessary joinder of each school district in the case of each other school district. During the present PHC, all parties,

including Student, concurred with the ALJ's tentative ruling (except as to specific hearing dates), and there was no objection to bifurcation. Accordingly, based on the matters with respect to bifurcation set forth in the August 19, 2013, order, Student's case is bifurcated for all remaining purposes as follows:

Student v. SFUSD (OAH Case Number 2013030851 – SFUSD);

Student v. BUSD (OAH Case Number 2013030851 – BUSD); and

Student v. OUESH (OAH Case Number 2013030851 – OUESD).

2. Motion for Continuance: Prior to the start of the PHC, Student filed a written request for a continuance of the due process hearing to enable his recently retained counsel time to obtain documents and prepare for hearing, and to permit mediation between the parties. SFUSD, BUSD, and OUESD opposed any continuance and the motion was argued orally.

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

Student's request for a due process hearing (complaint) against all three school districts was filed on March 20, 2013. A PHC was conducted on May 8, 2013, at which time the matter was set for hearing to begin on May 14, 2013. In that PHC, OAH granted Student's motion for a continuance to seek new legal counsel and set the matter for a due process hearing as to all three school districts to begin on September 3, 2013, for 11 days. In granting such a lengthy continuance, the ALJ warned Student that no further continuance would be granted without a substantial showing of good cause. At the PHC on August 19, 2013, Student had still not retained legal counsel and again asked for a continuance. The present motion is evaluated with respect to each school district in light of the bifurcation.

(a) Student v. SFUSD – Hearing Dates and Change of Venue: Following the PHC, on August 26, 2013, Student filed a notice of settlement and request to dismiss SFUSD. During the PHC, the undersigned issued a ruling on Student's motion to continue with respect to SFUSD. Dates and location for the hearing against SFUSD were set. However, in light of Student's dismissal of SFUSD, those dates are vacated and this Order need not further address Student's action against SFUSD.

(b) Student v. BUSD – Hearing Dates and Change of Venue: Venue for this hearing is changed from Oakley to the district offices of BUSD. Pursuant to the May 2013 PHC order, this portion of Student's case is presently set for hearing on September 9 through 12, 2013, for the same reason as stated above. During the PHC, in connection with bifurcating the cases, the ALJ vacated these hearing dates to permit a week between SFUSD's case and BUSD's case. Consistent with this purpose, the August 19, 2013, tentative bifurcation order proposed hearing dates of September 16 through 19, 2013 (which were the final hearing dates in the May 2013 order).

During the PHC, Student included as a ground for continuance that his attorney is not available on September 16 and 17, 2013, due to scheduling conflicts. Student's motion to vacate and continue those dates was granted over the objection of BUSD. The PHC and hearing are continued as follows:

Prehearing Conference:	September 6, 2013, at 1:00 p.m.
Hearing:	September 18, 2013, at 9:30 a.m., and September 19 and 20, 2013, at 9:00 a.m., and continuing Monday through Thursday thereafter as needed in the discretion of the ALJ.[1]

(c) Student v. OUESD – Hearing Dates and Change of Venue: Venue for this hearing remains at the district offices in Oakley. The August 19, 2013, tentative bifurcation order proposed new hearing dates of September 30, and October 1 through 3,2013. During the PHC, Student included as a ground for continuance that his attorney is not available on those dates due to a preplanned and booked trip out of the State from September 27, through October 5, 2013. Student's motion to continue those proposed dates was granted over the objection of OUESD. However, bearing this district's objections in mind, Student is not entitled to a lengthy continuance. The PHC and hearing are continued as follows:

Prehearing Conference:	October 21, 2013, at 10:00 a.m.
Hearing:	November 4, 2013, at 1:30 p.m., and November 5, 6, and 7, 2013, at 9:00 a.m., and continuing Monday through Thursday thereafter

[1] Hearing on September 20, 2013, will end at noon to accommodate the schedule of District's attorney.

as needed in the discretion of the ALJ.

The 45-day time line to issue a decision in this matter applies to the entirety of the action and is not accelerated by the bifurcation. The ALJ will issue separate decisions as to each of the two remaining school districts.

3. Notice to Witnesses: The parties shall immediately notify all potential witnesses of the hearing dates relative to their cases, 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.

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 next PHC scheduled in each bifurcated case. The parties in each case may meet and confer to negotiate a voluntary mediation date and request OAH to schedule mediation prior to hearing.

5. Settlement: Dates for the PHC and hearing in each bifurcated case will not be cancelled until a letter of withdrawal, or a request for dismissal with the signature page of the signed agreement has been received by OAH. IF A FULL AND FINAL SETTLEMENT AS TO ANY BIFURCATED CASE IS REACHED AFTER 5:00 P.M. ON THE LAST BUSINESS DAY PRIOR TO THE HEARING IN THAT CASE, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT **(916) 274-6035,** AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY.

If a settlement agreement has been executed but is subject to approval of a school board, the parties may file a motion for OAH to vacate the hearing dates in the specific bifurcated case and set a telephonic status conference (TSC) for a Wednesday not less than two weeks following board approval.

IT IS SO ORDERED.

Dated: August 28, 2013

/s/
DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings