

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CALIFORNIA DEPARTMENT OF  
EDUCATION.

OAH CASE NO. 2012030888

ORDER FOLLOWING PRE-HEARING  
CONFERENCE

On January 7, 2013, a recorded, telephonic prehearing conference (PHC) was commenced before Administrative Law Judge (ALJ) Robert G. Martin, Office of Administrative Hearings (OAH). Attorney Phillip VanAllsburg appeared on behalf of Student. Attorney Len Garfinkel appeared on behalf of the California Department of Education (CDE).

As a preliminary matter, the parties discussed Student's request for a continuance of the PHC and Due Process Hearing in the matter, which was made on grounds that Student on December 27, 2013 retained new counsel who needed time to prepare the matter for hearing and who was unavailable for the previously-scheduled hearing dates of January 15-17, 2013. CDE did not object to the requested continuance, and the parties agreed on mutually-available dates.

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).)

Based on discussion of the parties, and considering all relevant facts and circumstances, it appears that good cause exists to grant Student's requested and unopposed continuance in light of the substitution of Student's recent substitution of attorneys in the matter and the unavailability of new counsel to appear on the scheduled hearing dates. Accordingly, the ALJ issues the following order:

#### ORDER

1. On Student's motion, made with good cause and not opposed by the CDE, the PHC in this matter is continued for completion, and the Due Process Hearing continued, as follows:

Completion of Telephonic PHC: March 4, 2013 at 1:30 p.m.

Due Process Hearing: March 11-13, 2013, and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ. The hearing shall begin at 9:00 a.m. and end at 5:00 p.m., except for March 11, 2013, on which day the hearing shall start at 1:30 p.m., unless otherwise ordered. The hearing shall take place at the Office of Administrative Hearings, San Diego Office, 1350 Front Street, Suite 3005, San Diego, CA 92101.

No further continuances are contemplated for any reason given the age of this matter.

2. Student shall file and serve a PHC Statement no later than three business days prior to the continued PHC. District is not required to file and serve an amended PHC Statement unless doing so is necessary to address changes in witnesses, exhibits, or other information set forth in the District's PHC Statement filed December 28, 2012.

3. Each party is given leave to file a pre-hearing brief no later than three business days prior to the continued PHC, but is not required to do so.

Dated: January 08, 2013

/s/

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ROBERT MARTIN  
Administrative Law Judge  
Office of Administrative Hearings