

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SAN MATEO-FOSTER CITY SCHOOL
DISTRICT.

OAH CASE NO. 2012050400

ORDER FOLLOWING PREHEARING
CONFERENCE

On January 14, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Rebecca Freie, Office of Administrative Hearings (OAH). Lenore Silverman, Attorney at Law, appeared on behalf of San Mateo-Foster City School District (District). Student's attorney, Susan Foley, did not appear.¹ The PHC was recorded.

Shortly before 10:00 a.m., the time when the PHC was scheduled to begin, Student's attorney sent a letter to OAH via facsimile requesting a continuance of the PHC and the due process hearing, and the scheduling of a mediation. The letter was not filed by OAH until 10:35 a.m., and consequently unknown to the ALJ. Grounds for this request were that Student had been ill, and therefore observations of him in his current placement by the District, and other assessments could not be completed. The attorney also represented that she would be unavailable at 10:00 a.m. for the PHC because she had a medical appointment. During the PHC, the District did not object to the request for the continuance.

Good cause is found for the continuance of this matter and the scheduling of a new mediation date. However, no further continuances shall be granted. The matter shall be scheduled as follows:

Mediation shall be held Tuesday, February 5, 2013, at 9:30 a.m. The PHC shall be held Wednesday, February 13, 2013, at 1:30 p.m. The due process hearing shall begin on February 20, 2013 at 9:30 a.m., and shall continue day-to-day, Monday through Thursday at the discretion of the ALJ.

¹ The ALJ attempted to contact Student's attorney for the PHC at 10:00 a.m., the time when the PHC was scheduled to begin, at 10:15 a.m., and at 10:30 a.m. Each telephone call was forwarded to voicemail, and messages were left advising Student's attorney that the PHC would be going forward at 10:30 a.m. if she did not appear. A separate Order to Show Cause addresses the attorney's absence from the PHC.

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.

Dated: January 15, 2013

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings