

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ANDERSON UNION HIGH SCHOOL
DISTRICT AND RED BLUFF JOINT
UNION HIGH SCHOOL DISTRICT.

OAH CASE NO. 2012090493

ORDER FOLLOWING PREHEARING
CONFERENCE, GRANTING
CONTINUANCE OF PREHEARING
CONFERENCE ONLY

On January 14, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Theresa Ravandi, Office of Administrative Hearings (OAH). Amanda Metcalf, Attorney at Law, appeared on behalf of Student. Anne Sherlock, Attorney at Law, appeared on behalf of the Anderson Union High School District (Anderson). Diane Beall, Attorney at Law, appeared on behalf of the Red Bluff Joint Union High School District (Red Bluff). The PHC was recorded.

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

1. Motion for Continuance of PHC. At the beginning of the PHC, Student's counsel represented that the matter "had settled" as of Friday, January 11, 2013, and she had "done everything she could to notify OAH of this fact" so that the PHC and hearing dates would be taken off calendar.¹ All parties represent that they have reached an agreement in principal with a written agreement being circulated for signatures. Anderson has executed the agreement, and it is anticipated that Red Bluff and Student will execute the agreement

¹ Ms. Metcalf has not submitted a faxed request to dismiss Student's case or a notice of withdrawal based upon a signed settlement agreement with the signature page attached. Rather, Ms. Metcalf indicated that she contacted the staff member assigned to the case, sent an electronic message and left a voicemail message on the settlement line. During the PHC, Ms. Metcalf made clear her frustration with OAH procedures. Some of this frustration may stem from a lack of familiarity with the established procedures and orders issued by OAH. Ms. Metcalf is encouraged to review the OAH due process hearing manual available on the OAH website and the scheduling order issued in this case. Her future compliance with orders and procedures is expected. In particular, Student's PHC statement was due by Wednesday, January 9, 2013, prior to the date the matter purportedly settled, but no PHC statement was submitted to OAH on behalf of Student.

very shortly. The parties jointly requested to continue the PHC and agreed to the date of Friday, January 18, 2013 at 2:00 p.m., to allow the parties time to obtain all necessary signatures and submit a notice of withdrawal to OAH, along with the signature page of the settlement agreement.²

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).)

There is good cause for a continuance of the PHC only. In the absence of an executed settlement agreement and a notice of withdrawal, the hearing **may not** be dropped from the calendar but the PHC may be continued. The hearing dates remain as previously set and the PHC is continued to January 18, 2013, at 2:00 p.m.³

2. Other Matters. Student's counsel is ordered to file her PHC statement no later than noon on Friday, January 18, 2013, if this matter is proceeding to hearing. OAH has received each District's PHC statement. The parties agree to delay the exchange of their evidence binders to Friday, January 18, 2013. 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 January 18, 2013.

3. Settlement. The parties are encouraged to continue working together to reach an agreement before the PHC and due process hearing dates. The parties shall inform OAH in writing immediately should they reach a final signed agreement between now and January 18, 2013, and file appropriate documents in support of a request to dismiss the matter.

² OAH ordinarily conducts PHC's on Wednesdays and Fridays. In order to accommodate the parties, the ALJ agreed to specially set this matter for a Friday.

³ OAH expects Student's counsel in the future to either timely file her PHC statement or a request for continuance based upon good cause. OAH expended ALJ resources to prepare for this PHC without the benefit of Student's clarification of the issues or identification of witnesses and exhibits.

4. Failure to comply with this order may result in the exclusion of evidence or other sanctions, including the issuance of an order to show cause as to why counsel should not be held responsible for costs incurred by OAH in preparing for the PHC.

IT IS SO ORDERED.

Dated: January 14, 2013

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings