

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PITTSBURG UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012090041

ORDER FOLLOWING PREHEARING
CONFERENCE GRANTING MOTION
FOR CONTINUANCE AND SETTING
NEW DATES

This matter is set for hearing beginning on February 19, 2013. On February 13, 2013, a telephonic prehearing conference (PHC) in this matter was held before Administrative Law Judge Deidre L. Johnson (ALJ), Office of Administrative Hearings (OAH). Attorney Barbara Snethen appeared on behalf of Student (Student). Attorney Melanie Seymour appeared on behalf of the Pittsburg Unified School District (District). The PHC was not recorded.¹

1. Motion for Continuance: During the PHC, District requested a continuance of the case on the grounds that the parties have arrived at an agreement in principle requiring some time to reduce to a written settlement agreement, and District has not received any documents from Student to date as required by law.² Student agreed to a short continuance but opposed any lengthy continuance.

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).)

¹ The ALJ encountered unknown technological difficulty and was unable to start the recording equipment.

² Education Code sections 56505, subdivisions (e)(7) and (e)(8), and 56505.1, subdivision (f).

This case was filed by Student on August 31, 2012, and has been continued a few times. Student established that no lengthy continuance should be granted. However, Student has not complied with the Education Code requirements for delivery of her documentary exhibits to District not less than five business days prior to the hearing, now set to begin next Tuesday, February 19, 2013, after a three-day holiday weekend. In addition, OAH is supportive of the settlement process. District thus established cause for a continuance to the next available hearing date for attorney Jan Tomskey, who represents the District for hearing.

Based on good cause shown, the request for continuance is granted. All dates are vacated. This matter is set for the following dates and times:

Prehearing Conference: March 4, 2013, at 1:30 p.m.

Hearing March 12, 2013, at 9:30 a.m.,
March 13 and 14, 2013, at 9:00 a.m.

2. Notice to Witnesses: 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.

3. 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. The parties may request OAH to schedule a voluntary mediation date prior to the hearing.

4. Settlement: Dates for hearing 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. The parties should otherwise plan to attend the scheduled PHC and the hearing unless different arrangements have been agreed upon by the assigned ALJ or ordered by OAH.

IT IS SO ORDERED.

Dated: February 14, 2013

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings