

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

BERKELEY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012090769

ORDER FOLLOWING PREHEARING
CONFERENCE; GRANTING
REQUEST FOR CONTINUANCE OF
PREHEARING CONFERENCE AND
DUE PROCESS HEARING DATES

On February 13, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Adeniyi A. Ayoade, Office of Administrative Hearings (OAH). Laurene B. Bresnick, Attorney at Law, appeared on behalf of Student (Student). Lenore Silverman, Attorney at Law, appeared on behalf of the Berkeley Unified School District (District).¹ The PHC was recorded.

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

1. Motion to Continue: The due process hearing in this matter is currently set to begin on February 25, 2013. During the PHC of February 13, 2013, the parties indicated that they had just reached a resolution of all issues in the matter, but that they do not yet have a written settlement agreement. Both indicated that they would need additional time in order to prepare the written agreement for parties' signatures. Therefore, both parties jointly requested that the PHC and the due process hearing dates be continued. Both agreed that the PHC should be set for February 25, 2013, and the due process hearing on March 11-14, 2013.

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

¹ Ms. Silverman appeared on behalf of Jan E. Tomskey, the attorney for the District.

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).)

OAH has evaluated parties' request for good cause. Good cause is established for a continuance of the PHC and due process hearing dates as requested by the parties. Thus, the parties' request to continue the PHC and due process hearing dates is:

☒ **Granted.** This matter shall be set on the following dates and times:²

Prehearing Conference: February 25, 2013, at 1:30 PM

**Due Process Hearing: March 11, 2013, at 1:30 PM; and
March 12-14, 2013, at 9:00 AM**

2. Timely Disclosure of Witnesses/Exhibits. Education Code section 56505, subdivision (e)(7), provides for disclosure of witnesses and exhibits "at least" five business days prior to the hearing. The OAH order dated October 1, 2012, ordered the production of lists of all witnesses and documents by an earlier date, that is: at least three business days prior to this PHC. As of the day of the PHC, both parties have disclosed their witnesses and exhibits through their respective PHC statements.

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 PHC on February 25, 2013. Unless modified by this order, all other orders contained in the OAH's Scheduling Order dated October 1, 2012 shall remain in effect.

² However, because prior continuances have been granted in this matter, any subsequent request to continue must be accompanied with written declaration showing that good cause exists for additional continuances.

4. Settlement: Dates for hearing will not be cancelled until a letter of withdrawal, or a request for dismissal and the signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ.

IT IS SO ORDERED.

Dated: February 14, 2013

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings