

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CALIFORNIA CHILDREN'S SERVICES.<sup>1</sup>

OAH CASE NO. 2012080386

ORDER FOLLOWING PREHEARING  
CONFERENCE GRANTING JOINT  
REQUEST FOR CONTINUANCE AND  
SETTING NEW DATES

This matter is set for hearing beginning on February 20, 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 Daniel Shaw appeared on behalf of Student (Student). Attorney Jeffery Maisen appeared on behalf of the Cupertino Union School District (District) and the Santa Clara County Office of Education (SCCOE).<sup>2</sup> Attorney Derek Backus appeared on behalf of California Children's Service (CCS). The PHC was recorded.

1. Motion for Continuance: On February 12, 2013, prior to the PHC, Student filed a joint request for a continuance of the case on the ground that CCS is conducting an assessment of Student, a process that may take six weeks.

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).)

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<sup>1</sup> CCS is administered by, and is also referred to as the California Department of Health Care Services.

<sup>2</sup> On the morning of February 13, 2013, ALJ Peter Paul Castillo issued a written order granting the motion of District and County to be dismissed from the remainder of this case. Since OAH had not yet served the order, all parties were joined in the beginning of the PHC by telephone. After the undersigned ALJ informed the parties of the order, Mr. Maisen hung up and District and SCCOE did not participate in the remainder of the PHC.

Student and CCS established cause for a continuance to the dates they have mutually agreed upon, due to assessments. However, this case was filed by Student on August 13, 2012, and has been continued several times, including an amended complaint in November 2012, which restarted all timelines. Therefore, no further continuance will be granted without a substantial showing of good cause.

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: April 24, 2013, at 1:30 p.m.<sup>3</sup>  
Hearing May 7, 2013, at 9:30 a.m.,  
May 8 and 9, 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.

Dated: February 13, 2013

/s/

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DEIDRE L. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>3</sup> During the PHC, the parties selected Monday, April 29, 2013, for the PHC. However, the Special Education Division of OAH is in mandatory training that week and the date is unavailable. The ALJ notified the parties by telephone that the PHC will be on April 24 instead. The parties may meet and confer to request another date.