

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012100242

ORDER FOLLOWING PREHEARING
CONFERENCE, GRANTING MOTION
TO WITHDRAW AS COUNSEL,
GRANTING CONTINUANCE AND
SETTING NEW DATES

On February 20, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Theresa Ravandi, Office of Administrative Hearings (OAH).¹ F. Richard Ruderman, Attorney at Law, appeared on behalf of Student. Parent appeared with Sandra Hammond as support.² Sang-Jin Nam and Melody Hawkins, Attorneys at Law, appeared on behalf of the Fresno Unified School District (District). The PHC was recorded.³

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

1. Motion to Withdraw as Counsel: On February 13, 2013, Student's counsel filed a motion to withdraw as attorney of record. Although not specified on the proof of service, counsel provided Parent with a copy of this motion. Counsel seeks to withdraw as he believes he is unable to effectively and properly continue to represent Student. Parent objects to the motion to withdraw. On February 14, 2013, the District filed a non-opposition to Student's motion. Student will not suffer undue prejudice if the motion is granted. Student's counsel's request to withdraw is granted. Parent acknowledged receipt of Student's file from counsel. Parent will be representing Student on her own behalf unless another attorney or advocate files a notice of representation with OAH.

2. Motion for Continuance: This matter is set for hearing on February 26 through 28, 2013. As part of his motion to withdraw, Student's counsel requested a

¹ ALJ Margret Broussard was present and observed the PHC.

² Ms. Hammond was an advocate for Parent in a separate matter and is not appearing on behalf of Student in this matter.

³ Discussions with the Parent and Student's counsel, during the course of the motion to withdraw, occurred off the record and without the presence of the District.

continuance on behalf of Student so that she could obtain new counsel. The District has filed a non-opposition. Parent is seeking a continuance of this matter so that she may obtain new counsel or have sufficient time to consider how to best proceed and prepare for hearing.

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 to continue the hearing to allow Student an opportunity to retain new counsel or prepare for hearing if she chooses to proceed without counsel. All dates are vacated. The parties agree to the following dates and the matter will be set as follows:

Prehearing Conference:	May 20, 2013 at 1:30 PM
Due Process Hearing:	May 29, 2013 at 9:30 AM, May 30, 2013 at 9:00 AM, and June 4, 2013 at 9:30 AM. ⁴

3. 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.

4. Other Matters: The District filed a PHC statement. Student is ordered to file a PHC statement as described in the initial scheduling order dated October 5, 2012, at least three business days prior to the PHC now set for May 20, 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 May 20, 2013.

5. Settlement. The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. Dates for the PHC and hearing will not be cancelled until a letter of

⁴ At the PHC, parties shall be prepared to discuss substituting Friday, May 31, 2013, as the final day of hearing.

withdrawal or a request for dismissal with the signature page of a signed agreement has been received by OAH.

IT IS SO ORDERED.

Dated: February 20, 2013

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings