

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

On February 25, 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). Melanie Seymour, 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 PHC: The due process hearing in this matter is currently set to begin on March 11, 2013. On February 13, 2013, a PHC was held in this matter. Based on the joint request of the parties during the PHC, the PHC was continued to February 25, 2013, in order to afford the parties time to finalize their settlement agreement resolving all issues in this case.

At the PHC of February 25, 2013, the parties indicated that the written settlement agreement is yet to be finalized, as District's Director of Special Education has been out of the office, and as such, she is yet to sign the written settlement agreement. Both parties explained that the Director would return to work on February 26, 2013, and that she is expected to sign the agreement. Thus, both parties requested a continuance of the PHC in order to obtain all signatures required to finalize the settlement agreement.² Parties agreed that the PHC should be reset for February 27, 2013, and requested a 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 for good cause. (34 C.F.R. §

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

² The ALJ expressed his displeasure at the parties' failure to timely inform OAH of their need for additional time in order to finalize the written settlement agreement.

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 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, and good cause is established for a continuance of the PHC. Therefore, the parties' request to continue the PHC date is:

☒ Granted. This PHC is continued to the following date and time:

Prehearing Conference: February 27, 2013, at 1:30 PM³

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 27, 2013. Unless modified by this order, all other orders contained in the OAH's Scheduling Order dated October 1, 2012 shall remain in effect.

³ The due process hearing dates are confirmed. Also, because prior continuances have been granted in this matter, no subsequent request to continue would be granted without a written declaration showing that good cause exists for such continuance.

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 25, 2013

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings