

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

HAYWARD UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012080885

ORDER CONTINUING DUE PROCESS
HEARING

This matter came on for hearing before Administrative Law Judge Deidre L. Johnson, Office of Administrative Hearings (OAH), State of California, on March 12, 2013, in Hayward, California.

Attorney LaJoyce Porter represented Student and her parents. Mother was present. Student did not attend the hearing. Father appeared briefly.

Attorney James Meeker represented the Hayward Unified High School District (District). District's Interim Director of Special Education Susan Parker was present.

Based on discussions with the parties on the record, no substantive hearing was held and the hearing was continued. The following order is issued based on the orders issued during the hearing:

1. Motion to Withdraw as Attorney for Student: At the outset of the hearing, Student's attorney made a motion to withdraw as the attorney of record for Student and Parents based on irreconcilable differences leading to Ms. Porter's conclusion that she could no longer represent them. District did not object to the motion. Ms. Porter's motion was granted and she withdrew from the case.

2. Motion for Continuance: Based on the withdrawal of Student's attorney, Parents requested a continuance of the case because they were not prepared to represent Student for the hearing and in order to seek legal counsel. District did not oppose a brief continuance but opposed a lengthy continuance based on the history of this case.

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).)

As noted on the record, this case has been continued multiple times. Student's request for a due process hearing (complaint) was filed on August 27, 2012. By written notice dated October 12, 2012, Student's prior attorney, Nicole Hodge Amey, withdrew from the case. On October 17, 2012, Ms. Porter notified OAH of her representation of the family and made a motion to amend the complaint, which was granted. On November 9, 2012, Student's amended complaint was filed and all timelines started over. Since then, several more continuances have been granted. While Student is entitled to one more continuance to afford Parents time to prepare for hearing and seek legal representation, no further continuances will be granted without a substantial showing of good cause. Accordingly, Student's motion was granted.

3. Hearing Dates, Times, and Location: The hearing dates were vacated. The hearing shall be held on April 10 through 12, 2013, for a total of three days of hearing.¹ The hearing shall begin at 9:30 a.m. on April 10, and at 9:00 a.m. on all other days. The hearing shall be held at the District's offices at 24411 Amador Street, Hayward, California 94540.²

2. Notice to Witnesses: The parties shall immediately notify their witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available to the other party without need for a subpoena. A witness will not be regarded as unavailable for purposes of showing good cause to continue the hearing if the witness has not been properly notified of the hearing date or properly subpoenaed, as applicable.

3. Exhibits and Witnesses: Each party shall serve an exhibit binder containing their respective exhibits and exhibit list on the other party, along with a list of the witnesses they intend to call to testify, not less than five business days prior to the start of the hearing as required by law.³ All previous prehearing conference (PHC) orders regarding witnesses

¹ The ALJ agreed to hear the third day on Friday, April 12, 2013.

² As previously ordered, at a minimum, the hearing room shall have four or more separate tables capable of being moved into a courtroom configuration with an electrical outlet near the ALJ's table. The District shall ensure that all parties and the ALJ have drinking water and tissue available to them during the hearing. In addition, District has agreed to provide parking spaces the parties and ALJ with confidential access arrangements.

³ Education Code section 56505, subdivision (e)(7).

and exhibits remain in effect. **Prior to the due process hearing, the parties shall informally meet and confer by telephone to formulate their witness schedules. District will initiate the telephone call prior to close of business on Thursday, April 4, 2013. At the commencement of the hearing, the parties will present the witness schedules to the ALJ.**

4. Amended PHC Statements: Should the parties make any material changes to their PHC statements previously filed with OAH, including their respective lists of witnesses and exhibits, they shall file amended PHC statements not later than 5:00 p.m. on Tuesday, April 2, 2013.

5. Closed Hearing: The hearing shall be closed to the public at Student's request.

6. Settlement: The parties are encouraged to negotiate 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. If a settlement is reached five business days or fewer before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact during business hours by telephone at **(916) 263-0880**.

Dates for hearing will not be cancelled until a letter of withdrawal or request for dismissal along with 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. **IF A FULL AND FINAL SETTLEMENT IS REACHED AFTER 5:00 P.M. ON THE LAST BUSINESS DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035, AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. OAH will check for messages the evening prior to the hearing and the morning of the hearing.**

7. Failure to comply: Failure to comply with this order may result in the exclusion of evidence and/or other sanctions.

Dated: March 15, 2013

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings