

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013040098
v.	
FOLSOM CORDOVA UNIFIED SCHOOL DISTRICT,	
FOLSOM CORDOVA UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2013090197
v.	
PARENT ON BEHALF OF STUDENT.	ORDER FOLLOWING PREHEARING CONFERENCE AND CONTINUING PREHEARING CONFERENCE AND DUE PROCESS HEARING

On November 1, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Charles Marson, Office of Administrative Hearings (OAH). Student's Parents appeared on behalf of Student. Anne M. Sherlock, Attorney at Law, appeared on behalf of the Folsom Cordova Unified School District (District). The PHC was recorded.

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

1. Continuance. At the outset of the PHC the parties' pending motions for continuance of the due process hearing were discussed. The hearing is now scheduled to begin on November 14, 2013.

a. On October 28, 2013, Student moved for a continuance of the hearing on the grounds that Parents have requested, but the District has not yet provided, some of Student's records and that are essential to their preparation for and presentation of their case at hearing. These records allegedly consist of teacher reports read, and test protocols discussed, at an IEP team meeting on August 23, 2013. Parents are also formally seeking amendment of the IEP document produced at that meeting; the document is expected to be important in the upcoming hearing. Parents request that the matter be continued for at least 30 days so that the records can be obtained and amended sufficiently in advance of the hearing to allow them to prepare.

b. On October 30, 2013, the District moved for a continuance on the ground that two important witnesses would be unavailable to testify if the hearing were held as scheduled. The District asserts that speech language pathologist Jane deGelleke, who performed the last independent speech and language assessment of Student, will be out of the country during the hearing as now scheduled and without reliable access to a telephone; and that she will not return until November 30, 2013, and will not be available to testify until December 2, 2013, or later.

The District also asserts that Caren Maxwell, who has been Student's speech and language therapist during the school years 2011-2012 and 2012-2013, is on medical leave and has been forbidden by her doctor to testify in person or by telephone at the hearing as now scheduled; and that it is anticipated Ms. Maxwell will be available to testify "in the near future."

The District further asserts that the testimony of Ms. deGelleke and Ms. Maxwell will be essential to its case. In addition, the District's attorney, Ms. Sherlock, represents that she is scheduled to participate in several specified due process hearings in December 2013 and January and February 2014, and will be unavailable during those hearings. The request also establishes that the District will be on winter break the weeks of December 23 and December 30, 2013.¹

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 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).)

¹ Student's request, filed on November 1, 2013, for an extension of time to respond to the District's motion for continuance is denied as unnecessary, since the parties and the ALJ agree on the need for continuance, the issue was fully discussed at the PHC, and the parties agreed on hearing dates.

Both parties have established good cause for a continuance of the due process hearing for at least 30 days. The parties estimate in their PHC statements that the hearing will take four or five days. After discussion of the availability of the parties, witnesses, and the District's attorney, the parties agreed on the hearing dates set forth below. The due process hearing and related PHC are therefore continued to the dates set forth in the following section (number 2).

2. Continued PHC and Hearing Dates and Times. Because the outcome of pending motions may alter the issues to be considered at a PHC, this telephonic PHC is continued to December 6, 2013, at 10 a.m.

The hearing shall take place on December 16 through 20, 2013, and continuing day-to-day thereafter, Monday through Thursday, at the discretion of the ALJ. On December 16, 2013, the hearing shall begin at 1:30 p.m. and end at 5:00 p.m., and on the remaining days the hearing shall begin at 9:00 a.m. and end at 5:00 p.m., unless otherwise ordered.

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. Pending Motions. OAH has previously extended Student's time to respond to the District's pending motion to dismiss issues to November 7, 2013. Each party has three business days to respond to the other motions recently filed by the opposing party. For the purpose of this schedule, Student's motions for orders compelling the production of records, and a response to their request for amendment of records, shall be deemed filed on October 30, 2013.

4. All other matters deferred to continued PHC. All other prehearing matters are deferred to the continued PHC on December 6, 2013. The parties may, but are not required to, file new PHC statements three business days before the continued PHC.

IT IS SO ORDERED.

Dated: November 4, 2013

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings

