

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013020784

ORDER FOLLOWING PREHEARING
CONFERENCE AND CONTINUING
PREHEARING CONFERENCE

On December 6, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Rebecca Freie, Office of Administrative Hearings (OAH). Jonathan Quint, Attorney at Law, appeared on behalf of Student. Kim Schulist, Attorney at Law, appeared on behalf of the District. The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The parties have circulated a settlement agreement that has been signed by all required people, other than Student's father, who will be signing the agreement on Monday, December 9, 2013. 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).)

The PHC is continued to Monday, December 9, 2013, at 1:00 p.m. 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. The issues may be discussed at the next PHC, and also at the commencement of the hearing, if necessary, as will other matters that are routinely dealt with at a PHC. No further continuances will be granted without a showing of extraordinary good cause.

2. Settlement. Once Student’s attorneys have obtained Father’s signature on the settlement agreement, they shall send OAH a request for dismissal. THE PARTIES SHOULD SIMULTANEOUSLY FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT THE FAXINATION LINE AT 916-376-6319. Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH.

3. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

Dated: December 6, 2013

_____/s/_____
REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings