

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014010263

ORDER FOLLOWING PREHEARING
CONFERENCE AND GRANTING
REQUEST TO CONTINUE
PREHEARING CONFERENCE AND
DUE PROCESS HEARING DATES

On July 28, 2014, a telephonic prehearing conference was held before Administrative Law Judge Adeniyi A. Ayoade, Office of Administrative Hearings. Gail Hodes, Attorney at Law, appeared on behalf of Student. David Mishook, Attorney at Law, appeared on behalf of the Oakland Unified School District.¹ The PHC was recorded. Based on discussion with the parties, the ALJ issues the following order:

Motion to Continue Prehearing Conference and Hearing Dates

During the prehearing conference, on behalf of Oakland, Mr. Mishook requested a continuance of the prehearing conference, and hearing dates due to the fact that Ms. Silverman would be unavailable to participate in the due process hearing, currently scheduled to begin on August 5, 2014, due to a family emergency.² Through his attorney, Student opposed Oakland's motion to continue the dates.

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

¹ Mr. Mishook appeared on behalf of Lenore Silverman, the attorney for Oakland Unified School District.

² Due to the family emergency, Ms. Silverman has been unable to prepare for the hearing, and is unavailable for the hearing scheduled to begin on August 5, 2014.

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 ALJ has evaluated the arguments in support of, and in opposition to the motion to continue the dates as presented by the parties. The ALJ has also reviewed the request to continue the dates for good cause, and considered all relevant facts and circumstances. Good cause is found for a continuance of the prehearing conference and due process hearing dates due to the family emergency involving Ms. Silverman. Accordingly, the request to continue the dates is:

☒ Granted. The prehearing conference and due process hearing dates are continued and reset as follows:

Prehearing Conference: **October 20, 2014, at 10:00 a.m.**

Due Process Hearing: **November 4-6, and 11, 2014,³** and continuing day-to-day thereafter, Monday through Thursday, at the discretion of OAH until the hearing is concluded. The hearing shall begin at 9:30 a.m. on November 4, 2014. The starting time for the remaining dates shall be determined at the PHC on October 20, 2014.

IT IS SO ORDERED.

DATE: July 28, 2014

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings

³ While Oakland requested that the due process hearing be continued to September 2014, OAH's calendar is unable to accommodate any September 2014 due process hearing dates. Accordingly, the hearing dates were continued as indicated above.