

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

CUPERTINO UNION SCHOOL
DISTRICT.

OAH Case No. 2014090942

ORDER FOLLOWING PREHEARING
CONFERENCE

This matter is set for hearing beginning on November 18, 2014. On November 10, 2014, a telephonic prehearing conference in this matter was held before Administrative Law Judge Deidre L. Johnson, Office of Administrative Hearings. Attorney David Tollner appeared on behalf of Student and Parents. Attorney Eliza McArthur appeared on behalf of the Cupertino Union School District. The conference was recorded.

1. Motion for Continuance: On November 3, 2014, Cupertino filed a motion for a continuance of the prehearing conference and due process hearing in this matter due to scheduling conflicts and the desire for more time to mediate. On November 7, 2014, OAH denied the motion on the ground that the parties had failed to meet and confer regarding new dates as required by OAH. At the outset of the telephonic conference, Student made an oral motion to continue the hearing in this matter on the grounds that the parties had reached an agreement in principle and were close to settling the matter, and on the attorneys' scheduling conflicts with other cases. District joined in the motion.

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).)

No previous request for a continuance has been made or granted in this matter. The parties established good cause for a continuance. A continuance is therefore granted and the previously set hearing dates are vacated.

Based on the available dates for OAH and the parties, this matter is set as follows:

Prehearing Conference: February 6, 2015, at 10:00 a.m.

Hearing: February 17-19, and 24-26, 2015, beginning at 9:30 a.m. on February 17, and 24, 2015, and at 9:00 a.m. all other dates.¹

2. Notice to Witnesses: 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 purpose 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. 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 next prehearing conference.

4. Settlement: The above dates will not be cancelled until a letter of withdrawal, or a request for dismissal with the signature page of a signed settlement agreement has been received by OAH. In the event a settlement agreement is executed subject to board approval, the parties may request to continue the matter and set a telephonic status conference call following the date anticipated for board approval. The parties shall otherwise plan to attend the scheduled prehearing conference and the hearing unless different arrangements have been agreed upon by the assigned ALJ, or as ordered by OAH.

DATE: November 10, 2014

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

¹ The length of the hearing should be reevaluated in connection with the next prehearing conference. During the hearing, if the parties establish cause to extend the hearing longer, the hearing may continue day to day, Monday through Thursday as needed, in the discretion of the ALJ