

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MODESTO CITY SCHOOLS,

v.

STUDENT.

OAH Case No. 2014110141

ORDER FOLLOWING PREHEARING
CONFERENCE; GRANTING
REQUEST TO CONTINUE DATES;
AND SETTING MEDIATION,
PREHEARING CONFERENCE AND
DUE PROCESS HEARING DATES

On November 17, 2014, a telephonic prehearing conference was held before Administrative Law Judge Adeniyi A. Ayoade, Office of Administrative Hearings. Marcy L. Gutierrez and Amanda E. Ruiz, Attorneys at Law, appeared on behalf of the Modesto City School. Parent, as Student's Educational Representative,¹ did not participate in the prehearing conference.²

The PHC was recorded. Based on the parties' written requests to continue the dates as discussed below, and the discussion with the attorneys for Modesto, the ALJ issues the following order:

1. Motion to Continue Prehearing Conference and Hearing Dates. On November 10, 2014, Student filed a request to continue the dates in this matter, requesting to continue the hearing for three months in order to obtain legal representation. On November 13, Modesto filed its response to the request to continue, indicating that it does not oppose to the request, but that it does not believe that a three month continuance is reasonable or warranted. Instead, Modesto requested that the hearing dates be continued to December 17-19, 2014.

¹ Student is nineteen years old, and has appointed her Parent as her Educational Rights' Holder.

² Between 10:00 and 10:07 a.m., the ALJ made three telephone calls to Parent, using the telephone number Parent provided to OAH, in order to reach Parent for the prehearing conference. Parent did not answer any of the calls.

APPLICABLE LAW AND DISCUSSION

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 ALJ has evaluated the requests to continue the dates as presented by the parties, and has considered all relevant facts and circumstances. Good cause is found for a continuance of the prehearing conference and due process hearing dates. Accordingly, the request to continue the dates is:

☒ **Granted.** The prehearing conference and due process hearing dates are continued as requested by the parties, and new mediation, prehearing conference and hearing dates are set as follows:³

Mediation: **December 17, 2014, at 9:30 a.m.**

Prehearing Conference: **February 16, 2015, at 10:00 a.m.**

Due Process Hearing: **February 24-26, 2015**, 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 February 24, 2015. The starting time for the remaining dates shall be determined at the prehearing conference on February 16, 2015.

³ While Modesto requested that the due process hearing be continued to December 17-19, 2014, OAH's calendar is unable to accommodate the dates requested by Modesto. Accordingly, the dates are continued as requested by Parent.

2. Timely Disclosure of Witnesses/Exhibits. Education Code section 56505, subdivision (e)(7), provides for disclosure of witnesses and exhibits “at least” five business days prior to the hearing. The parties are to comply with Education Code section 56505, subdivision (e)(7).

3. Other Matters: All other matters relevant to preparing for the hearing, including clarification of issues and identification of witnesses and exhibits, will be addressed at the PHC on February 16, 2015. Unless modified by this order, all other orders contained in the OAH’s Scheduling Order dated November 5, 2014 shall remain in effect.

4. Settlement: Dates for hearing will not be cancelled until a letter of withdrawal, or a request for dismissal and 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 WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 P.M. THE DAY BEFORE THE HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035. THE PARTIES SHOULD ALSO LEAVE CONTACT INFORMATION SUCH AS CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. 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.

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

IT IS SO ORDERED.

DATE: November 17, 2014

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings