

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

POWAY UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2014100904

ORDER FOLLOWING PREHEARING
CONFERENCE OF NOVEMBER 10,
2014; ORDER CONTINUING
PREHEARING CONFERENCE AND
DUE PROCESS HEARING

On November 10, 2014, a telephonic prehearing conference was held before Administrative Law Judge Darrell Lepkowsky of the Office of Administrative Hearings. Justin Shinnfield, Attorney at Law, appeared on behalf of the Poway Unified School District. Student's parent appeared on behalf of Student. The ALJ recorded the PHC.

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

1. Hearing Dates and Times. District filed a motion to continue the prehearing conference and due process hearing because counsel for District has another case, filed prior to this one, which is set for hearing on the same date. It was the first request for a continuance. Parent objected to the continuance because she does not believe she will be available on any date other than November 18, 2014, the date originally scheduled for the hearing, due to issues involving her care of Student. Parent was not able to give any other dates in the future on which she would be available.

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).)

District has provided good cause for its requested continuance. Its motion for continuance is granted. Parent has three months to arrange for the provision of care for Student so that Parent can attend the hearing in person if Parent intends to participate. The proceedings are continued as follows:

PREHEARING CONFERENCE: FEBRUARY 13, 2015, at 10:00 a.m.

DUE PROCESS HEARING: FEBRUARY 24, 25, and 26, 2015, and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ.

The hearing shall begin at 9:30 a.m. on Tuesday, February 24, 2015, and at 9:00 a.m. on February 25 and 26, 2015, unless otherwise ordered.

2. All requirements for the filing of prehearing conference statements and the exchange of exhibits and witness lists remain as set forth in the Scheduling Order issued by OAH on October 28, 2014.

3. Settlement. The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

IT IS SO ORDERED.

DATE: November 10, 2014

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings