

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MARIPOSA COUNTY UNIFIED SCHOOL DISTRICT, MARIPOSA COUNTY OFFICE OF EDUCATION, STANISLAUS COUNTY OFFICE OF EDUCATION, RIPON UNIFIED SCHOOL DISTRICT, AND SAN JOAQUIN COUNTY OFFICE OF EDUCATION.

OAH Case No. 2014100503

ORDER FOLLOWING PRE-HEARING CONFERENCE; GRANTING REQUEST TO CONTINUE DATES; AND SETTING PREHEARING CONFERENCE AND HEARING DATES

On November 24, 2014, a telephonic prehearing conference was held before Administrative Law Judge Adeniyi A. Ayoade, Office of Administrative Hearings. Daniel R. Shaw, Attorney at Law, appeared on behalf of Student. Marcy L. Gutierrez, Attorney at Law, appeared on behalf of the Ripon Unified School District; Rodney L. Levin, appeared on behalf of the San Joaquin County Office of Education; and Karen E. Gilyard, Attorney at Law, appeared on behalf of the Mariposa County Unified School District, Mariposa County Office of Education and Stanislaus County Office of Education. The PHC was recorded. Based on discussion with the parties, the ALJ issued the following order:

1. Motion to Continue Prehearing Conference and Hearing Dates. On November 17 and 18, 2014, OAH received two separate written requests to continue the due process hearing dates from the Mr. Levin and Ms. Gutierrez, respectively. Through their requests, San Joaquin and Ripon requested that the due process hearing dates in this matter be continued due to a family medical issue involving the attorney for San Joaquin, and/or non-availability of the attorneys on the currently set dates for hearing. On November 20, 2014, attorney for Student opposed both requests to continue the dates. At the prehearing conference, each party was heard regarding the requests to continue the dates. Ms. Gilyard indicated that she has no opposition to the request 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 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).)

OAH has reviewed the request to continue the dates for good cause and considered all relevant facts and circumstances. San Joaquin's request to continue the dates is:

☒ **Granted.**¹ Based on San Joaquin's request, as discussed and modified during the November 24, 2014 prehearing conference, all dates are continued and reset as follows:

Prehearing Conference: **February 20, 2015, at 1:00 PM**

Due Process Hearing: **March 3-5, and 9-12, 2015.** The hearing shall begin at 9:00 AM each day, except for March 3 when the hearing shall begin 9:30 AM, and March 9 when the hearing shall begin at 1:30 PM. Thereafter, the hearing shall continue day to day, Monday through Thursday at the discretion of the ALJ until the hearing is concluded.

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 shall 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 20, 2015. Unless modified by this order, all other orders contained in the OAH's Scheduling Order dated October 15, 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

¹ Because the dates are being continued for good cause as requested by San Joaquin, the request to continue the dates as requested by Ripon is moot.

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 25, 2014

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings