

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SAN LEANDRO UNIFIED SCHOOL
DISTRICT AND OAKLAND UNIFIED
SCHOOL DISTRICT.

OAH Case No. 2014080928

ORDER FOLLOWING PREHEARING
CONFERENCE CONTINUING
PREHEARING CONFERENCE ONLY

On January 5, 2015, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Theresa Ravandi, Office of Administrative Hearings. LaJoyce Porter, Attorney at Law, appeared on behalf of Parents and Student. Mary Hernandez and Leah M. Smith, Attorneys at Law, appeared on behalf of the San Leandro Unified School District (San Leandro). Lenore Silverman, Attorney at Law, appeared on behalf of the Oakland Unified School District (Oakland). The PHC was recorded.

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

1. Motion to Vacate Hearing or in the Alternative to Continue the PHC. On January 5, 2015, Student filed a letter with OAH requesting that the PHC be cancelled as the parties were working to finalize settlement documents.¹ At the start of the PHC, Student's counsel verbally requested that the matter be taken off calendar pending finalization of the settlement agreements after which Student would file a motion to dismiss the matter. OAH will not vacate hearing dates without a signed settlement agreement which resolves all issues, or a motion to dismiss or withdraw the matter filed by the requesting party. Accordingly, Student's motion to vacate the hearing dates pending a motion to dismiss was denied. Student then requested that the PHC be continued to allow the parties an opportunity to finalize the settlement agreements. San Leandro and Oakland did not oppose a continuance of the PHC. This matter is currently scheduled for hearing beginning January 13, 2015.

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

¹ The ALJ had not received this document prior to the start of the PHC, and there is no proof of service attached to this document.

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).)

Student established good cause for a continuance of the PHC only. **The PHC will now be held on Friday, January 9, 2015, at 1:00 p.m.** The hearing remains as previously set, and will be held at San Leandro's district office located at 14735 Juniper Street, San Leandro, California 94579.

San Leandro shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.

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 purposes 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 the issues and identification of witnesses and exhibits, will be addressed at the PHC on January 9, 2015. Student is ordered to file his PHC statement no later than January 7, 2015, in the event he does not move to dismiss this matter. The parties agreed to a late exchange of their documentary evidence, by Friday, January 9, 2015, at 4:00 p.m.

4. Settlement. The parties are encouraged to continue working together to reach an agreement before the continued PHC date. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled PHC and hearing dates. Dates for the PHC and hearing will not be vacated unless OAH receives a letter of withdrawal or request for dismissal from Student with the signature page of the signed agreements, or unless otherwise ordered. If an agreement is pending board approval, Student may request that OAH vacate dates and schedule a status conference.

IT IS SO ORDERED.

DATE: January 5, 2015

/s/
THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings