

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SAN DIEGUITO UNION HIGH SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015050700

ORDER FOLLOWING PREHEARING
CONFERENCE AND ORDER
SETTING SECOND MEDIATION AND
GRANTING CONTINUANCE

On June 8, 2015, Administrative Law Judge Chris Butchko, Office of Administrative Hearings commenced a telephonic prehearing conference in this matter. Ernest Bell, Attorney at Law, appeared on behalf of San Dieguito Unified School District. Student's Mother appeared on behalf of Student. The PHC was recorded.

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

1. Request for a Continuance, Mediation, and Hearing Dates, Times, and Location. On June 5, 2015, District filed a request to continue the initially set hearing date due to the unavailability of District counsel Justin Shinnefield due to previously set hearings. Because of the late filing by District, Mother's response was not received by the ALJ prior to the PHC. Mother opposed the continuance on the grounds that it was a hardship for her as a working single parent to reschedule her attendance. She did not wish to postpone the hearing, and she was unavailable during July and most of August due to family needs. Mother stated that she wished to work with District to resolve the matter without hearing, but that if that was not possible, she was considering filing her own action against the District and possibly seeking to have it consolidated with this matter. She understood that doing so would cause a resetting of dates for the consolidated case. District could not accommodate any dates in July or early August because of the unavailability of its staff during those times.

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) (2006); 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).)

District did establish good cause for a continuance. The unavailability of counsel and witnesses is sufficient good cause for an initial continuance. Mother indicated that she may seek to file and consolidate another action with this case, which would require setting new

dates. In addition, Mother expressed a desire to have a second mediation session with District and believed that doing so would be beneficial. Mr. Bell did not know whether the District would be willing to attend but did not oppose the request. Therefore, a second mediation in this matter shall be held on June 16, 2015, at 9:30 a.m., at the District offices at 710 Encinitas Blvd., Ste. 105, Encinitas, CA 92024-3357.¹ The PHC in this matter shall be on August 24, 2015, at 3:00 p.m., and OAH shall initiate the telephone call. The hearing shall take place on September 1-3, 2015. The hearing shall begin at 9:00 a.m. and end at 5:00 p.m., except for September 1, 2015, when the hearing shall begin at 9:30 a.m., unless otherwise ordered. The hearing shall take place at the District's offices, located at 710 Encinitas Blvd., Ste. 105, Encinitas, CA 92024-3357.

District 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. § 701 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.

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.

2. All other PHC matters will be addressed at the continued PHC.

3. Settlement. The parties are encouraged to continue their attempts 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. If a settlement is reached five business days or fewer before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact by telephone at (916) 263-0880. Dates for hearing will not be cancelled until the letter of withdrawal or 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 SETTLEMENT IS REACHED AFTER 5:00 P.M. ON THE LAST BUSINESS DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035, AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. The ALJ will check for messages the evening prior to the hearing and the morning of the hearing.

¹ District shall notify OAH and Mother by 5:00 p.m. on June 10, 2015, as to its availability to participate in mediation on June 16, 2016.

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

IT IS SO ORDERED.

DATE: June 08, 2015

/s/

CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings