

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

WEST CONTRA COSTA UNIFIED
SCHOOL DISTRICT.

OAH Case No. 2015060692

ORDER FOLLOWING PREHEARING
CONFERENCE; GRANTING
REQUEST FOR CONTINUANCE; AND
SETTING PREHEARING
CONFERENCE AND HEARING
DATES

On October 19, 2015, a telephonic prehearing conference was held before Administrative Law Judge Dena Coggins, Office of Administrative Hearings. Parent appeared on behalf of Student. Spanish interpreter Hector Monsilla interpreted for Parent. Shawn Olson Brown, Attorney at Law, appeared on behalf of West Contra Costa Unified School District. The PHC was recorded.

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

1. Request for Continuance. The hearing in this matter was originally set to begin on October 6, 2015. On September 25, 2015, PHC and hearing dates were continued, with the new PHC date set for October 16, 2015, and the hearing to begin on October 27, 2015. On October 5, 2015, Student filed a request to continue the dates in this matter because he was in the process of hiring an attorney and the attorney would need additional time to prepare. Student's request for continuance was denied on October 14, 2015, because Student failed to serve a copy of the continuance request on West Contra Costa. On October 16, 2015, the PHC was continued to October 19, 2015, because Parent was unavailable. During the PHC on October 19, 2015, Parent represented that he has been in communication with an attorney and requested additional time to allow the attorney to prepare for hearing.

A due process hearing must be conducted and a decision rendered within 45 days of receiving notice of the due process complaint 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 proximity to 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).)

Parent established good cause for a further continuance in this matter. All dates were vacated and the matter was continued to the following dates:

Prehearing Conference:	November 30, 2015, at 3:00 p.m.
Due Process Hearing:	December 9, 2015, at 9:30 a.m., December 10, and December 15, 2015, at 9:00 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ.

The hearing shall take place at West Contra Costa's District Office located at 2465 Dolan Way, San Pablo, California 94806. West Contra Costa shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities. West Contra Costa has not yet certified that it will provide a facility for this case that complies with the law, and is ordered to inform OAH within two days of the date of this order it is able to certify that it will provide a facility that complies with the law.

2. Representative's Right to Proceed on Behalf of Student. By November 20, 2015, Student is ordered to file with OAH proof that Parent has been appointed Student's conservator, or file a written notice or letter, signed by Student, authorizing Parent to proceed on his behalf in this case, or otherwise indicating he has assigned Parent his educational rights. A copy of the filed document must be provided to West Contra Costa's attorney. If Student retains an attorney to represent him in this case, Student's attorney must file a Notice of Representation with OAH in order to proceed on Student's behalf, and provide the Notice to West Contra Costa's attorney.

3. Other PHC 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 November 30, 2015. West Contra Costa filed a PHC statement on July 22, 2015. Student is required to file a PHC statement at least three business days prior to the PHC and provide a copy of the statement to West Contra Costa's attorney. As indicated in the June 19, 2015, scheduling order, the PHC statement shall include the following:

- a. Each party's estimate of the time necessary to complete the due process hearing;
- b. A concise statement of the issues that remain to be decided at the due process hearing and the proposed resolution of such issues, based upon the issues raised in the due process hearing request;
- c. The name of each witness the party may call at the due process hearing, a brief summary of the subject of the expected testimony of the witness, and a description of the issue to which the testimony of the witness relates;
- d. The name and address of each expert witness the party intends to call at the due process hearing, a brief summary of the opinion that the expert is expected to give, and a description of the issue to which the testimony of the expert relates;
- e. A list of documentary evidence that the party intends to present, and a description of any physical or demonstrative evidence; and
- f. The need for an interpreter or special accommodation at the due process hearing.

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.

IT IS SO ORDERED.

DATE: October 19, 2015

_____/s/
DENA COGGINS
Administrative Law Judge
Office of Administrative Hearings