

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
RIVERBANK UNIFIED SCHOOL DISTRICT,

V.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2021120355

ORDER FOLLOWING PREHEARING CONFERENCE AND
GRANTING REQUEST FOR MEDIATION AND
CONTINUANCE OF THE DUE PROCESS HEARING

DECEMBER 27, 2021

On December 27, 2021, Administrative Law Judge Laurie Gorsline, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Kaitlyn Tucker, Attorney at Law, appeared on behalf of Riverbank Unified School District. Parent appeared on behalf of Student. Spanish language interpreter, Karen Rico, interpreted the proceedings for Parent. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

REQUEST FOR MEDIATION AND CONTINUANCE OF THE HEARING

On December 22, 2021, Riverbank filed a request for a January 21, 2022 mediation, and to continue the PHC to February 7, 2022, and the hearing to February 22 through 24, 2022, based on the parties' oral agreement to mediate the case on January 21, 2022 and to continue the hearing. However, Parent refused to provide her email over the telephone so that Riverbank's counsel could send Parent the joint request to sign. Riverbank's counsel asked Parent to send counsel an email so counsel could email the joint request to Parent, but counsel never received the email from Parent.

At the PHC, Parent agreed to the proposed mediation on January 21, 2022. Parent also agreed to continue the PHC to February 7, 2022 at 1:00 PM and to continue the hearing dates to February 23 and 24, 2022. Parent also provided her email address: chiquisex3@yahoo.com.

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 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).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The parties' request for mediation is granted based on the filing of

the request for mediation by Riverbank and Parent's agreement to mediation and continuance of the hearing. The parties' request for mediation constitutes good cause for the continuance. All previously scheduled dates in this matter are vacated. The new dates are:

MEDIATION DATE is January 21, 2022, 9:00 AM to 4:30 PM.

MEDIATION will occur via videoconference or telephone.

PREHEARING CONFERENCE will be held on February 7, 2022, at 1:00 PM.

DUE PROCESS HEARING will be held on February 23 and 24, 2022. OAH does not schedule hearings to begin the day after a Monday holiday. February 21, 2022 is a holiday.

PARTICIPANT INFORMATION SHEETS FOR MEDIATION AND PREHEARING CONFERENCES MUST BE FILED TWO BUSINESS DAYS PRIOR TO THE DATE OF THE SCHEDULED EVENT.

ANY CHANGES TO THE PARTICIPANTS' EMAIL ADDRESSES PROVIDED BY THE PARTIES IN THEIR REQUEST MUST BE FILED TWO BUSINESS DAYS BEFORE THE SCHEDULED EVENT.

The hearing shall begin at 9:30 AM on all days unless otherwise ordered. The hearing shall continue day to day, as needed at the discretion of the Administrative Law Judge. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference or with a showing of good cause why it was not possible to file the document by that date.

HEARING LOCATION

OAH is authorized to conduct due process hearings by videoconference or telephone. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) Based on state and federal guidance to address safety procedures due to the novel coronavirus, COVID-19, OAH will conduct the due process hearing by videoconference using the Microsoft Teams application. Unless otherwise ordered, participants are required to appear by videoconference using a webcam and Microsoft Teams.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses, if necessary, to ensure that the witnesses will appear to testify. A party's failure to notify or subpoena a witness to testify will not be considered good cause to continue the hearing.

LANGUAGE INTERPRETERS AND REASONABLE ACCOMMODATIONS

A Spanish language interpreter is required. OAH will provide the interpreter.

A party or participant in this case, such as a witness, requiring reasonable accommodation to participate in a mediation or hearing may contact OAH at (916) 263-0880, or send an email to OAHADA@dgs.ca.gov as soon as the need is known. The e-mail should have "Request for Accommodation" in the Subject Line. Additional information concerning requests for reasonable accommodation is available on OAH's website at: <https://www.dgs.ca.gov/OAH/Services/Page-Content/Office-of-Administrative-Hearings-Services-List-Folder/Request-Reasonable-Accommodations-for-OAH-Legal-Proceedings>.

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 if 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. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH at <https://www.applications.dgs.ca.gov/oah/oahsftweb>.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

FAILURE TO COMPLY

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the prehearing conference. Any discussion and conversation not referenced in this Order is not binding on the ALJ

conducting the hearing and may not be relied upon by the parties. The parties should be aware that, at hearing, the ALJ conducting the hearing has discretion to reconsider any part of this Order.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline

Administrative Law Judge

Office of Administrative Hearings