BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018090934
v.	ORDER FOLLOWING PREHEARING CONFERENCE; GRANTING CONTINUANCE AND SETTING PREHEARING CONFERENCE AND DUE PROCESS HEARING; DENYING MOTION TO BIFURCATE
SOUTHERN KERN SCHOOL DISTRICT.	

On January 7, 2019, a telephonic prehearing conference was held before Administrative Law Judge Tara Doss, Office of Administrative Hearings. Parent appeared on behalf of Student. Kyle Holmes and Darren Bogie, Attorneys at Law, appeared on behalf of Southern Kern School District. The PHC was recorded.

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

1. Motion to Continue.

On January 2, 2019, the parties filed a joint request to continue the prehearing conference and due process hearing dates in this matter.

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).)

The parties established good cause for the continuance. On November 1, 2018, Student's attorney withdrew from the case. Parent was not aware of the PHC or due process hearing dates on calendar; and was not aware of Student's responsibility to file a PHC statement. Parent seeks a continuance to allow time to prepare for a PHC and due process hearing, and time to retain a new attorney. Southern Kern does not object. Accordingly, the Motion to Continue is granted. The parties agreed upon new dates. All dates are vacated and this matter shall be set as follows:

Prehearing Conference:	**March 11, 2019, at 10:00 a.m.**
Due Process Hearing:	**March 19, 20, and 21, 2019, at 9:30 a.m. on the first day, and 9:00 a.m. on each following day, continuing day to day, as needed, at the discretion of the Administrative Law Judge.**

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 dates or properly subpoenaed, as applicable.

2. Motion to Bifurcate.

On January 2, 2019, Southern Kern filed a Motion to Bifurcate issues in Student's complaint outside of the two-year statute of limitations enumerated in special education law and/or claims concerning events that occurred prior to execution of a final settlement agreement in 2014. Student did not file an opposition; but at the PHC, objected to bifurcation of the issues.

Although there is no special education law or regulation that addresses bifurcation of issues, OAH generally looks to civil cases and the California Administrative Procedure Act for guidance. Government Code section 11507.3 of the APA states, in part:

> (b) The administrative law judge on the judge's own motion or on motion of a party, in furtherance of convenience or to avoid prejudice or when separate hearings will be conducive to expedition and economy, may order a separate hearing of any issue, including an issue raised in the notice of defense, or of any number of issues.

Code of Civil Procedure section 598 contains a similar provision for civil trials:

> The court may, when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby,

on motion of a party, after notice and hearing, make an order, no later than the close of pretrial conference in cases in which such pretrial conference is to be held, or, in other cases, no later than 30 days before the trial date, that the trial of any issue or any part thereof shall precede the trial of any other issue .

Holding two separate due process hearings in this case will not further judicial economy or save resources. Both hearings would likely involve the same witnesses and evidence. Furthermore, holding a due process hearing solely on limiting the timeframe of the issues is likely to delay the hearing on the underlying special education issues. Accordingly, Southern Kern's Motion to Bifurcate is denied without prejudice.

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. 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.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 P.M. THE DAY PRIOR TO 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 EMAIL THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT https://www.dgsapps.dgs.ca.gov/oah/oahsftweb .

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. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

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

4. Other PHC Matters. All other PHC matters will be discussed on March 11, 2019.

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

IT IS SO ORDERED.

DATE: January 7, 2019

DocuSigned by:
Tara Doss
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TARA DOSS
Administrative Law Judge
Office of Administrative Hearings