BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

| | |
|---|---|
| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>OAKLAND UNIFIED SCHOOL DISTRICT. | OAH CASE NO. 2014030356<br><br>CORRECTED ORDER FOLLOWING PREHEARING CONFERENCE, DENYING REQUEST FOR CONTINUANCE AND CONTINUING PREHEARING CONFERENCE[1] |

On April 18, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Rebecca Freie, Office of Administrative Hearings (OAH). Betsy Brazy and LaJoyce Porter, Attorneys at Law, appeared on behalf of Student. Lenore Silverman and Alejandra Leon, Attorneys at Law, appeared on behalf of Oakland Unified School District (District). The PHC was recorded.

On April 3, 2014, Student's counsel submitted to OAH a copy of a letter sent by Ms. Brazy to Ms. Silverman indicating that Student was preparing an amended complaint and would not be participating in mediation that was scheduled for April 10, 2014. District filed its PHC statement on April 15, 2014. On April 17, 2014, Student filed a request for continuance on OAH Form 80, which is intended to be used when making a joint request for continuance, asking that OAH set new hearing dates, indicating that the parties could not agree on dates. The form was filed by Ms. Brazy only. No reason was given for why the request for continuance was being made. Student did not file a PHC statement with OAH, nor has any motion to amend the complaint with a proposed amended complaint been filed with OAH.

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

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

[1] The previously issued order had the word "DRAFT" preceding the heading "BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS." There are no substantive changes to this order.

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).)

OAH has reviewed the request for continuance and considered all relevant facts and circumstances as discussed by the parties. The request for continuance is denied because good cause was not shown. However, in order to permit Student to file a PHC statement so that a meaningful PHC can be held, the ALJ is continuing, sua sponte, the PHC only. Student is order to file a PHC statement with OAH and transmit a copy to District no later than 5:00 p.m. on April 18, 2014,

Prehearing Conference: April 21, 2014, at 11:00 a.m.

Failure of Student to file a PHC statement with OAH by 5:00 p.m. on April 18, 2014, and transmit same simultaneously to District will result in an Order to Show Cause Hearing Regarding Sanctions Against Student's Counsel to be set.

IT IS SO ORDERED.

DATE: April 18, 2014

*/s/*

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings