BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>CUPERTINO UNION SCHOOL DISTRICT,<br><br>v.<br><br>PARENT ON BEHALF OF STUDENT. | OAH CASE NO. 2013070278<br><br>ORDER FOLLOWING PREHEARING CONFERENCE AND GRANTING REQUEST FOR CONTINUANCE OF PREHEARING CONFERENCE ONLY |

On July 19, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Theresa Ravandi, Office of administrative Hearings (OAH). Attorney Eliza McArthur appeared on behalf of the Cupertino Union School District (District). There was no appearance on behalf of Student. The ALJ twice attempted to reach Student's counsel by telephone and reached an answering machine. Two messages were left informing Student that this PHC would be convened with the District. The PHC was recorded.

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

1. Motion for Continuance: This matter is set for hearing on July 31, 2013. At the start of the PHC, the District's counsel represented that she believed that Student's attorney has been attending to personal family issues which rendered her unavailable for today's PHC, and has prevented the parties from timely filing a joint request for a continuance of the PHC and hearing dates which is the intent of both parties. Counsel for the District has also been experiencing medical issues, and was apologetic for not unilaterally filing a timely request to continue the dates in this matter. The District verbally requested a continuance of the hearing dates due to the unavailability of witnesses for the current hearing date and the desire of the parties to participate in mediation.

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 District has established good cause to briefly continue the PHC in this matter to allow additional time to file a joint request for a continuance or to file a written motion to continue the hearing dates. The PHC is continued to Monday, July 22, 2013, at 1:00 P.M. All other dates remain. Any further request to continue the hearing in this matter will be heard at the PHC on July 22, 2013 at 1 P.M.

2. Prehearing Conference Statements: The parties are admonished that pursuant to the scheduling order dated July 8, 2013, OAH requires the filing of a PHC statement at least three business days prior to the PHC. The OAH record in this case shows that neither party filed a PHC statement. Ms. McArthur apologized for this lapse on the part of the District and indicated that she has been out of the office due to her health condition. Due to the explanation of the District that the parties have been attempting to file a joint request for a continuance, that both counsel have experienced unexpected personal emergencies which have prevented them from timely complying with OAH policies regarding continuance requests and the filing of PHC statements, and that the District will be either filing a joint request for a continuance of the hearing or a written motion to continue by Monday morning, neither party is required to file a PHC statement for the continued PHC on Monday afternoon.

3. Order to Show Cause: Student's counsel is advised that OAH is considering issuing an order to show cause as to why Student should not be ordered to pay OAH's costs for failing to participate in the PHC on July 19, 2013. Student's counsel shall participate in the PHC on July 22, 2013, at 1 P.M. or timely submit a request to continue this matter or otherwise inform OAH of why counsel is not available for the continued PHC date.

IT IS SO ORDERED.

Dated: July 19, 2013

/s/
THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings