BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: STANISLAUS UNION SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH CASE NO. 2013050308 ORDER FOLLOWING PREHEARING CONFERENCE GRANTING STUDENT'S REQUEST FOR A CONTINUANCE AND SETTING NEW DATES

This matter is set for hearing beginning on August 12, 2013. On August 5, 2013, a telephonic prehearing conference (PHC) in this matter was held before Administrative Law Judge Deidre L. Johnson (ALJ), Office of Administrative Hearings (OAH). Attorney S. Diane Beall appeared on behalf of the Stanislaus Union School District (District). Attorney Roger A. Greenbaum appeared on behalf of Student and Parents (Student).[1] The PHC was recorded.

1. Motion for Continuance: On August 5, 2013, prior to the start of the PHC, Student filed a written request for a continuance of the due process hearing on multiple grounds. District opposed any continuance and the motion was argued orally.

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 .) 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.

[1] Father was joined in the telephone call to observe the PHC.

Rules of Court, rule 3.1332(d).) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

This case was filed by District on May 9, 2013. On May 29, 2013, OAH granted Student's previous motion for a continuance and set the matter for a due process hearing to begin on August 12, 2013. That motion was based in part on Father's call up to duty on May 25, 2013, in connection with his civilian employment with a private company that provides "on call" services to a United States (U.S.) Marine Corps base in San Bernardino County, California. In addition, Student's sibling was scheduled for surgery in July 2013.

Student's present request for a continuance, supported by declarations under penalty of perjury, first argues that Student is entitled to have sufficient time to arrange for an independent educational evaluation (IEE) regarding her eligibility for special education since District failed to arrange an IEE or provide Parents with the identity and agency criteria for private IEE evaluators. However, Student's argument misconstrues the applicable law and fails to understand that whether Student is entitled to an IEE is actually a possible resolution for District's issue as to the appropriateness of its triennial assessments of Student. If District prevails on that issue, Student would not be entitled to a publicly funded IEE. If District loses on that issue, OAH could order District to either fund or reimburse Parents for an IEE. Therefore, Student did not establish that she is entitled to additional time to seek a private IEE in advance of the hearing and a continuance on that ground is denied. In addition, Student's request to continue the hearing based on the unavailability of unknown witnesses, and counsel's past unavailability lack merit.

As a further ground for continuance, Student established that Father was unavailable to assist their counsel to prepare for the due process hearing during much of July 2013. She established that Parents retained legal counsel on July 10, 2013; and that Father was called up again for civilian service with the U.S. Military from July 11, 2013, to July 27, 2013. In addition, Father avers that he will be called upon periodically to absent himself due to his employment, including unavailability by telephone or email, in the future. This is Student's second continuance in this District-filed case. While Student is provided this additional opportunity to prepare for hearing with assistance of her Parents and counsel, and to have Parents present at the hearing, no further continuances will be granted without a substantial showing of good cause. It is incumbent upon Father to immediately notify his private employer and the U. S. Department of Defense, and/or the U.S. Marine Corp., where appropriate, that he is a party to a California administrative due process action that will proceed to hearing on the dates assigned below. Just as any other employed parent of a child with a disability who has a due process hearing, Father may make arrangements for a leave of absence, vacation, or other relief from his employment obligations in order to prepare for and attend Student's hearing as ordered below.

Based on good cause shown, the request for continuance is granted. All dates are vacated. This matter is set for the following dates and times:

Prehearing Conference:	September 13, 2013, at 1:00 p.m.
Hearing	September 23, 2013, at 1:30 p.m., September 24 through 26, 2013, at 9:00 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

2. Notice to Witnesses: 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 date or properly subpoenaed, as applicable.

3. Other Matters: All other matters relevant to preparing for hearing, including clarification of issues and identification of witnesses and exhibits, will be addressed at the next PHC. District shall serve Student's counsel with a copy of its PHC statement filed with OAH. Student shall file a written PHC statement not less than three business days prior to the next PHC as previously ordered. The parties may request OAH to schedule a voluntary mediation date prior to the hearing.

4. Settlement: Dates for hearing will not be cancelled until a letter of withdrawal, or a request for dismissal with the signature page of the signed agreement has been received by OAH. If a settlement agreement has been executed but is subject to approval of a school board, the parties may file a motion for OAH to vacate the hearing dates and set a telephonic status conference for a date following board approval. The parties should otherwise plan to attend the scheduled PHC and the hearing unless different arrangements have been agreed upon by the assigned ALJ or ordered by OAH.

IT IS SO ORDERED.

Dated: August 6, 2013

/s/
DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings