BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: HEALDSBURG UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2016051024 ORDER FOLLOWING PREHEARING CONFERENCE; GRANTING STUDENT'S REQUEST FOR CONTINUANCE; SETTING NEW HEARING DATES; AND GRANTING CHANGE IN VENUE

On June 20, 2016, a telephonic prehearing conference was held before Administrative Law Judge Theresa Ravandi, Office of Administrative Hearings. Carl D. Corbin, Attorney at Law, appeared on behalf of Healdsburg Unified School District. Father appeared on behalf of Parents and Student. The PHC was recorded.

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

1. Student's Request for Continuance. At the conclusion of the PHC, Father requested a continuance in order to better prepare for hearing and to seek legal representation. Healdsburg opposed the continuance. This is the second request for continuance.

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).)

Student's intent to seek legal representation constitutes good cause for one further continuance. Parent is to inform any possible legal representative of the dates set in this matter.[1] All pending dates are vacated and this matter is now scheduled as follows:

[1] If Student obtains legal representation, his representative is to file a Notice of Representation with OAH and serve this on Healdsburg.

Due Process Hearing:	July 26, 2016, at 9:30 a.m., July 27, 2016, at 9:00 a.m., and continuing day to day, Monday through Thursday, at the discretion of the ALJ.[2]

During the PHC, the ALJ indicated that this matter would be set for a further PHC. Having conducted a complete PHC, the ALJ declines to schedule a further PHC. **However, Student is ordered to file a PHC statement by close of business July 19, 2016, and serve this on Healdsburg's counsel.**

2. Change in Venue. Healdsburg moved to change the hearing location from its District Office to Healdsburg Junior High School located at 315 Grant Street in Healdsburg, California, in order to be able to provide a hearing room and facilities that meet OAH requirements.

Education Code section 56505, subdivision (b), provides that a special education due process hearing "shall be held at a time and place reasonably convenient to the parent or guardian and the pupil." Student did not oppose the change in venue which is in close proximity to the original location. **The hearing will be held at Healdsburg Junior High located at 315 Grant Street, Healdsburg, California, 95448.**

As ordered in the scheduling order, Healdsburg shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities. Healdsburg has filed a written certification that the facilities to be used for this case comply with the law.

Prior to the beginning of the hearing, Healdsburg shall ensure that the hearing room is configured into a courtroom setting and shall have at a minimum (1) a table for Student and his representatives; (2) a table for District's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. Healdsburg shall provide drinking water and tissue to all parties, witnesses and the ALJ. The same hearing room shall be used for each day of hearing and shall be available at least one hour prior to the commencement of the hearing each day. The hearing room shall be locked following the hearing each night. Healdsburg shall ensure that the hearing room and access to it are in compliance with the Americans with Disabilities Act.

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

---

[2] Healdsburg's counsel will know by the end of this week if these dates are unavailable for his witnesses and may submit a request to continue the dates.

continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

3. Issues and Proposed Resolutions. The issue for the due process hearing and the proposed resolution is listed below.

Issue: May Healdsburg exit Student from special education and relates services because he is no longer eligible?

Proposed Resolution: Healdsburg seeks an order that Student is no longer eligible for special education and relates services such that it may exit him from, and cease providing him, special education and relates services.

4. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall use numbers to identify exhibits, but shall place the letter "S" or "D" in front of the exhibit to designate if it is a Student or District exhibit (for example, "S-5, S-6, or D-1, D-2"). Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be Bates-stamped. Each exhibit binder shall contain a detailed table of contents. The parties shall serve their evidence binders on each other at least five business days prior to hearing, in compliance with Education Code section 56505, subdivision (e)(7). At the hearing, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and a second exhibit binder for use by witnesses. The parties may not serve exhibits on OAH prior to the hearing. In the event of duplicate exhibits, the most legible version will be used.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not timely exchanged shall not be admitted into evidence at the hearing unless the ALJ rules that it is admissible.

5. Witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses out of order. Neither party shall be permitted to call any witnesses not timely disclosed except for good cause shown, and at the discretion of the ALJ.

Both parties intend to call Healdsburg's Director of Special Education, Diane Conger, and Speech and Language Pathologist Elizabeth Watson. Parent also may call Student. At the start of the hearing the ALJ and the parties will discuss the length of time anticipated for direct and cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony, to ensure that this matter is concluded within the time allotted, based upon the parties' joint time estimates as well as on the issues presented. Evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear.

6. Scope of Witness Examination. Each witness shall be called to testify only once, except for rebuttal purposes, and all parties shall examine the witness on all issues when the witness is first called. After the first direct and cross-examinations, each party shall be limited in examining the witness to only those matters raised in the immediately preceding examination.

7. Telephonic Testimony. Whether a witness may appear by telephone is a matter within the discretion of the ALJ. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) Any party seeking to present a witness by telephone shall move in advance for leave to do so, unless the opposing party has stipulated that the witness may appear by telephone. The proponent of the witness shall provide the proposed witness with a complete set of exhibit binders from all parties, containing all of each party's exhibits, prior to the hearing; and shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness, and the witness to hear objections and rulings. No witness will be heard by telephone unless all these requirements have been fulfilled. Neither party requested telephonic testimony.

8. Electronic Recording of Hearing.

a. Audio Recording. Neither party requested permission to audio record the hearing. If the parties desire to make an audio recording, they shall move for leave to do so in advance of the hearing. Any permission to record the hearing shall be subject to the following conditions: 1) that OAH's recording is the only official recording; 2) that the recording will be turned on and off at the same time as the ALJ's recording, in order to avoid recording conversations while off the record; and 3) that operation of the party's recording mechanism will not be allowed to delay the hearing.

b. Video Recording. No party, witness or anyone else present may make any video recording of any part of the proceedings. Any person doing so shall be subject to sanctions.

9. Order of Presentation of Evidence. In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) Here, Healdsburg is the petitioning party. Accordingly, Healdsburg shall present its case-in-chief, followed by Student. The order in which the parties present their cases in chief shall be subordinate to the need for each witness to appear only once.

10. Motions. No pretrial motions are pending or contemplated, aside from a possible request for continuance if Healdsburg's witnesses are unavailable for the new hearing dates.

11. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

12. Conduct of Counsel and Hearing Room Decorum. Counsel, all parties, and all witnesses shall conduct themselves in a professional and courteous manner at all times. Cellular phones, pagers, recorders, and other noisemaking electronic devices shall be shut off or set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ.

13. Special Needs and Accommodations. A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar staff, identified in the scheduling order, at (916) 263-0880, as soon as the need is known. Additional information concerning requests for reasonable accommodation is available on OAH's website at: http://www.dgs.ca.gov/oah/Home/Accessibility.aspx.

14. Hearing Closed To the Public. The hearing will be closed to the public.

15. 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. Dates for the continued PHC and hearing will not be vacated unless OAH receives a letter of withdrawal or request for dismissal from Healdsburg with the signature page of the signed agreement, or unless otherwise ordered.

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

IT IS SO ORDERED.

DATE: June 20, 2016

DocuSigned by:
Theresa Ravandi
180B9BDB98E5424...

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings