BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. CLOVIS UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018070141 ORDER FOLLOWING PHC; RECONSIDERING AND RESCINDING ORDER FOR STATUS CONFERENCE *SUA SPONTE*; AND GRANTING IN PART AND DENYING IN PART REQUEST FOR CONTINUANCE OF PREHEARING CONFERENCE AND HEARING DATES

On November 16, 2018, the undersigned ALJ convened a telephonic prehearing conference with the parties to discuss a joint request to continue the PHC and due process hearing. F. Richard Ruderman, Attorney at Law, appeared on behalf of Student. Amanda E. Ruiz, Attorney at Law, appeared on behalf of Clovis Unified School District. The PHC was not recorded. [1]

On November 16, 2018, the parties filed a joint request to continue the PHC and due process hearing because a settlement agreement had been approved by Clovis's governing Board, and was circulating for signatures. Additionally, because the settlement includes settlement of two civil suits filed by Parents, and Student is a minor, the settlement agreement must also be approved by the Superior Court. The parties advised the ALJ that they believed the Superior Court judge would review the settlement agreement no later than February 1, 2019. The ALJ advised the parties on the record that a status conference would be set for February 6, 2019.

Upon further reflection, the ALJ has reconsidered the order made on the record, rescinds the order for a status conference on February 6, 2019, and continues the PHC and due process hearing.

APPLICABLE LAW

Reconsideration

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.)

[1] The PHC was not recorded because the ALJ neglected to start the recording device.

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).)

DISCUSSION

A status conference is only set when parties have entered into a final settlement agreement that is contingent on adoption by the settling party's school board. A status conference will not be set when an agreement is contingent upon the action of a third party. In that case, the matter is not deemed settled between those two parties. In this case, a third party, the Superior Court, must approve the settlement agreement because the agreement encompasses two civil actions by Parents and pertains to a minor. Therefore, the claims before OAH concerning alleged violations of the Individuals with Disabilities Education Act will not be conclusively resolved upon approval by Clovis's school board.

In the joint request for continuance, the parties asked that this matter be continued for a PHC on November 26, 2018, and a due process hearing to begin on December 4, 2018, because they believed the settlement agreement would be fully executed at that time. Based on the representations of the parties, they did not intend to start a due process hearing on December 4, 2018, but rather intended to request a status conference in February 2019, based on the need for Superior Court approval of the agreement.

As noted above, OAH will not set a status conference because a third party must approve a settlement agreement. Therefore, it is determined that the best course of action is to continue the PHC and due process hearing to a date by which it is anticipated the Superior Court will have considered the settlement and either approved it, or disapproved it. If the court does not approve the settlement, it will then be necessary to have this matter proceed to hearing. Because this matter was filed by Student on June 29, 2018, **no further continuances will be granted without a showing of extraordinary good cause.**

The matter will be set as follows:

Prehearing Conference: Friday, February 1, 2019, at 10:00 a.m.

Due Process Hearing:	Tuesday, February 12, 2019, at 9:30 a.m., February 13-14, 2019, at 9:00 a.m., continuing day-to-day thereafter at the discretion of the ALJ.

ORDER

1. The verbal order for a status conference has been reconsidered.

2. The verbal order for a status conference on February 6, 2019, is RESCINDED.

3. The parties are ordered to file a fully executed copy of the signature page(s) of the settlement agreement forthwith.

4. The matter is continued to the dates set forth above.

5. The parties shall file a notice of dismissal once the Superior Court has approved the settlement agreement, or be prepared to go forward with the PHC and due process hearing as scheduled if the agreement has not been approved by the Superior Court.

IT IS SO ORDERED.

DATE: November 20, 2018

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Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings