

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA BARBARA UNIFIED SCHOOL
DISTRICT AND SANTA BARBARA
COUNTY OFFICE OF EDUCATION.

OAH CASE NO. 2011080351

ORDER CONTINUING PREHEARING
CONFERENCE ONLY

This matter is set for hearing on Monday, November 28, 2011. On November 21, 2011, a telephonic prehearing conference (PHC) in this matter was scheduled before Administrative Law Judge Deidre L. Johnson (ALJ), Office of Administrative Hearings (OAH). No one appeared for Student and Parent (Student), as the ALJ was unable to reach their attorney Andrea Marcus, by telephone.¹ Attorney Melissa Hatch appeared for both the District and County. In an Order Granting Request for Continuance issued on September 20, 2011, OAH ordered the parties to attend this PHC.² The PHC was not recorded.

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).)

¹ The PHC was initially scheduled for 1:30 p.m. The ALJ continued the PHC to 3:30 p.m., and left telephone messages with Ms. Marcus' office telephone number of record, and so informed Ms. Hatch. Ms. Hatch was present for both conference calls and the ALJ again could not reach Ms. Marcus. Ms. Hatch agreed to continue the PHC to Wednesday, November 23, 2011, at 10:00 a.m.

² The parties are admonished to adhere to OAH scheduling orders or timely seek a continuance to obtain a ruling by OAH prior to scheduled events. In the future, sanctions may be imposed.

District and County represented that the parties have reached an agreement to settle this case, that both District and County have signed a written settlement agreement, and that they believe Parent and Student are in the process of signing the agreement. In addition, the record reflects that OAH received a similar message on November 15, 2011, indicating that a settlement agreement was being circulated. The case has therefore not been settled.

In the absence of an executed settlement agreement, the hearing may not be dropped from the calendar, but the PHC may be continued. It was incumbent on all parties to prepare for the PHC while negotiating a settlement, or to seek a continuance based on good cause. Both counsel are aware that OAH will not continue dates in a case unless the parties have filed a mutual request, or one or more parties have filed a noticed motion. In this matter, none of the parties timely filed a PHC statement at least three business days prior to the PHC as ordered by OAH in the Scheduling Order issued on August 29, 2011. Nor did the parties file a motion to continue the PHC and/or the hearing. In the absence of an executed settlement agreement, the parties are ordered to appear telephonically, file PHC statements no later than close of business on November 22, 2011, and prepare for hearing.

The PHC conference is hereby continued to the following date and time:

Prehearing Conference: November 23, 2011, at 10:00 a.m.

2. 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 PHC on November 23, 2011. The hearing date has not been changed.

3. 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 an agreement in principle is reached, the parties should plan to attend the scheduled PHC and the hearing unless different arrangements have been agreed upon by the assigned ALJ or otherwise ordered by OAH.

IT IS SO ORDERED.

Dated: November 21, 2011

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings