

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BERKELEY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013051117

ORDER SETTING DUE PROCESS
HEARING AND PREHEARING
CONFERENCE DATES

The due process hearing (DPH) in this matter is currently set for July 18, 2013. However, because no prehearing conference (PHC) has been held in this matter, the DPH cannot go forward. Accordingly, the purpose of this instant order is to set a PHC date and a new DPH date.

DISCUSSION AND ORDER

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).) The Office of Administrative Hearings (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).)

On May 24, 2013, Parent on behalf of Student filed a request for a due process hearing (complaint) naming the Berkeley Unified School District. On May 30, 2013, OAH issued a scheduling order setting PHC for July 10, 2013, and DPH for July 18, 2013. After

issuing the scheduling order, OAH realized that the July 10, 2013 PHC date was in conflict with OAH's new calendaring guidelines in that PHC's are no longer being held on Wednesdays. Therefore, OAH changed the PHC date to Friday, July 12, 2013. OAH's staff later confirmed that the parties were not informed of the date change, and the parties were not prepared for PHC on July 12, 2013. Thus, the PHC did not take place on July 12, 2013 and has not been held.

Therefore, in order to allow for the PHC to take place before the DPH, the currently scheduled DPH date must be reset. Nonetheless, OAH must timely conduct the hearing and issue a decision within the 45-day time line, unless an extension is granted for good cause. Therefore, this matter shall be set as follows:

Prehearing Conference: **July 19, 2013, at 10:00 AM**

Due Process Hearing: **July 23, 2013, at 9:30 AM**, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

The July 17, 2013 mediation date is confirmed.¹

PREHEARING CONFERENCE STATEMENT: Each party is required to submit a PHC Statement which shall be filed at least three business days prior to the PHC with the Office of Administrative Hearings, Special Education Division, 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833. The PHC Statement may be filed and served by facsimile transmission at (916) 376-6319. The parties need not mail a hard copy of any document sent by facsimile transmission. Unless otherwise directed by the ALJ, the parties shall not send by mail or facsimile transmission copies of documentary evidence intended for the due process hearing to OAH. The PHC Statement shall include the following:

- a. Each party's estimate of the time necessary to complete the Due Process Hearing;
- b. A concise statement of the issues that remain to be decided at the Due Process Hearing and the proposed resolution of such issues, based upon those issues raised in the due process hearing request;
- c. The name of each witness or expert the party may call at the Due Process Hearing, a brief summary of the subject of the expected testimony of the witness or expert, and a description of the issue to which the testimony of the witness relates;

¹ The parties may discuss any calendaring issue with the assigned mediator at the upcoming mediation session.

d. The name and address of each expert witness the party intends to call at the Due Process Hearing, a brief summary of the opinion that the expert is expected to give, and a description of the issue to which the testimony of the expert relates;

e. A list of documentary evidence that the party intends to present, and a description of any physical or demonstrative evidence; and

f. The need for an interpreter or special accommodation at the due process hearing.

PREHEARING MOTIONS: All prehearing motions shall be served upon the opposing party and filed with the Office of Administrative Hearings, Special Education Division, **at least three business days before the PHC**. Prehearing motions may be filed and served by facsimile transmission unless they exceed 35 pages in length in which case other means of delivery shall be used.

CONTINUING COOPERATION: The parties shall continue to confer and cooperate with each other to (1) facilitate the exchange of evidence, (2) reach stipulations of fact, law and the admissibility of evidence in order to promote the efficient conduct of the hearing, and (3) promote productive settlement discussions.

Dated: July 16, 2013

/s/
ADENIYI A. AYOADE
Administrative Law Judge
Office of Administrative Hearings