

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014051093

ORDER FOLLOWING PREHEARING
CONFERENCE, DISMISSING
EXPEDITED ISSUE, AND SETTING
NEW MEDIATION, PREHEARING
CONFERENCE AND HEARING
DATES

On July 11, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Rebecca Freie, Office of Administrative Hearings. Nicole Jamison and Rick Ruderman, Attorneys at Law, appeared on behalf of Student. Cathy Holmes, Attorney at Law, appeared on behalf of Elk Grove Unified School District (Elk Grove). The PHC was recorded.

Based on discussion of the parties, the ALJ issues the following orders:

There was a lengthy discussion about Student’s sub-issue 1(m), which alleged that Elk Grove “denied [Student] a free appropriate public education . . . during the . . . 2013-2014 school year[], including extended school year[] by: [¶] . . . [¶] [r]emoving him from placement for more than 10 days without conducting an [*sic*] manifestation determination review.” The ALJ explained to the parties that because the allegation concerned a disciplinary change of placement, that portion of the hearing needed to be held on an expedited basis and, therefore, the expedited hearing would begin at 1:30 p.m. on July 14, 2014.¹ Student then withdrew that allegation without prejudice on the record.

Shortly before the PHC began, the parties filed a joint request to set a new mediation date, and to continue the PHC and the due process hearing. The basis of the request was an interim agreement between the parties that Student would be independently assessed and a desire of the parties that the assessments be completed before the hearing began.

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

¹ A due process hearing concerning a disciplinary change of placement “must occur within 20 school days of the date the complaint requesting the hearing is filed.” (34 C.F.R. § 300.532, subd. (c).) Student’s due process complaint was filed with OAH on May 23, 2014.

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).) 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).)

The ALJ reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

Granted, as modified below. This matter will be set as follows:

Mediation:	October 23, 2014, at 9:30 a.m.
Prehearing Conference:	November 7, 2014, at 1:00 p.m. ²
Due Process Hearing:	November 18-20, 2014, beginning at 9:30 a.m., on the first day of hearing, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. ³

IT IS SO ORDERED.

DATE: July 14, 2014

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings

² The parties asked that the PHC be set on November 5, 2014, at 1:30 p.m. November 5, 2014, is a Wednesday, and OAH holds PHC's only on Mondays and Fridays. Further, start times for PHC's are 10:00 a.m., 1:00 p.m., and 3:00 p.m. Therefore the ALJ has changed the date and starting time for the PHC.

³ The parties requested a starting time on the first day of hearing at 1:00 p.m., but since November 18, 2014, is a Tuesday, OAH will begin the hearing at 9:30 a.m., which is the normal starting time for a hearing beginning on a Tuesday that does not follow a legal holiday.