

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. 2014090119

ORDER FOLLOWING PREHEARING
CONFERENCE, GRANTING
CONTINUANCE AND SETTING
PREHEARING CONFERENCE AND
HEARING DATES

On March 16, 2015, a telephonic prehearing conference was held before Administrative Law Judge Theresa Ravandi, Office of Administrative Hearings. Kathryn E. Dobel, Attorney at Law, appeared on behalf of Parents and Student. Jan E. Tomsy, Attorney at Law, appeared on behalf of Berkeley Unified School District. The PHC was recorded.

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

1. Motion to Continue. This hearing was set to begin hearing on March 24, 2015. On March 13, 2015, Berkeley filed a motion to continue the hearing due to the unavailability of its counsel, who is scheduled to commence an expedited due process hearing on behalf of another district on March 24, 2015. Student opposed the continuance, as this matter has been pending since September 2014. This is the third request to continue this matter. During the PHC, both parties were heard on the motion.

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).)

Berkeley established good cause for one final continuance in this matter. This matter is continued as follows:

Prehearing Conference: April 24, 2015, at 10:00 a.m.

Due Process Hearing: May 5, 2015, at 9:30 a.m., May 6-7, 2015 at 9:00 a.m., and May 11, 2015, at 1:30 p.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ.

The hearing shall take place at Berkeley's District offices located at 2020 Bonar Street, Berkeley, California, 94702. Berkeley shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.

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

3. Other Matters. All other matters relevant to preparing for hearing, including clarification of the issues and identification of witnesses and exhibits, will be addressed at the PHC on April 24, 2015. If the parties choose to amend their PHC statements, they shall ensure that any amended statement is filed at least three business days prior to the PHC.

4. 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 PHC and hearing dates. Dates for the PHC and hearing will not be cancelled unless OAH receives a notice of withdrawal or request for dismissal of this matter from Student with the signature page of the signed agreement, or unless otherwise ordered.

IT IS SO ORDERED.

DATE: March 16, 2015

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings