

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

DUBLIN UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012010475

ORDER GRANTING REQUEST FOR  
CONTINUANCE AND SETTING  
PREHEARING CONFERENCE AND  
DUE PROCESS HEARING

This matter was filed on January 18, 2012. While the complaint has since been amended, the matter has been continued more than once since the filing of the case. On June 20, 2012, the Dublin Unified School District (District) filed a request to continue the matter into late September 2012, on the grounds of unavailability of counsel and a key witness for District. On June 22, 2012, Student filed an opposition to the request to continue.

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).)

District asserts that its counsel is on vacation on July 5, 2012, the date of hearing in this matter. However, District does not provide any information on when counsel will return from vacation. District asserts that one key witness is unavailable until August 24, 2012, while caring for a terminally ill parent. While this is a sympathetic situation, it does not support continuing a multiple day hearing, with multiple witnesses for one individual. No information is provided as to whether this witness can testify by means other than being physically present at the hearing. Furthermore, no information is provided that would assure OAH, or the parties, that this witness will return on August 24, 2012. For example, what

happens if the needs of the individual's terminally ill parent continue beyond August 24, 2012, or the parent takes a turn for the worst requiring a longer stay? Finally, District asserts that its counsel is not available for hearing until the last week of September 2012 because of conflicting hearings in other matters and a scheduled presentation where she is the presenter. Student objects to the length of the continuance. Student asserts that he does not oppose the continuance on the grounds of counsel's unavailability due to vacation. However, Student does object to the other grounds as they would delay the hearing into the next school year.

Were this matter to be heard in the last week of September 2012, it could foreseeably delay the rendering of a written decision until November 2012, ten months after the filing of the case. That is not acceptable to OAH. This matter has previously been continued due to the unavailability of one witness and the schedule of District's administrators. There is no guarantee provided by District that the currently unavailable witness will not have further complications with the terminally ill parent, requiring him to remain unavailable. The issue of witness unavailability and alternatives ways to address that, such as by telephonic testimony or completion of the remainder of the hearing, is better addressed at the hearing.

Finally, District's counsel's other conflicts, currently set between August 24 and September 26, 2012, do not constitute good cause. First, there is a significant amount of time between now and August 24, 2012. Special education matters often settle close to hearing. What appears to be a conflict on the calendar now for September 2012, may be resolved by August 2012. Second, OAH notes that the cases cited by District are cases filed subsequent to this matter. While the filing date of a case does not necessarily determine whether it takes precedence over another matter, it is a factor considered should two cases conflict on the calendar.

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

Granted. All dates are vacated. This matter will be set as follows: [Delete items not needed]

Prehearing Conference: August 13, 2012, at 1:30 PM  
Due Process Hearing: August 21 – 23, 2012, at 9:30 AM

IT IS SO ORDERED.

Dated: June 26, 2012

/s/  
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BOB VARMA  
Presiding Administrative Law Judge  
Office of Administrative Hearings