

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CASTRO VALLEY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012031253

ORDER DENYING REQUEST FOR
CONTINUANCE

On August 29, 2012, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Theresa Ravandi, Office of Administrative Hearings (OAH). Mother appeared on behalf of Student (Student). Attorney Deborah Ungar Ettinger appeared on behalf of Castro Valley Unified School District (District). Following Parties' discussion at the PHC with the ALJ, the due process hearing in this matter was scheduled to take place between September 10 through 13, 2012.

On August 31, 2012, both parties file a Joint Request for Continuance (JRFC) asking that the due process hearing dates be continued on the ground that the parties are discussing settlement and that Parents was awaiting a draft written settlement agreement that they would need more time to review. On September 6, 2012, OAH denied the JRFC on the ground that the request failed to establish good cause for continuance.

On September 6, 2012, the parties again filed another JRFC. The request was filed on similar ground as before, except that the parties represented in the second JRFC that they had reached a settlement in the case. The time requested was to enable Parents time to review the written settlement agreement. On September 7, 2012, OAH granted the JRFC, and set the due process hearing to begin on October 29, 2012. In its Order, OAH indicated that no further continuances would be granted without the parties establishing substantial good cause.

On October 26, 2012, the parties yet again filed a JRFC. Without providing more, the parties indicated that they "are very close to resolving all issue[s] in [a] settlement agreement". Despite the fact that the parties have now been saying that they are either close to settlement or that they have a settlement agreement since at least August 31, 2012, OAH was still willing to work with the parties to avoid a needless hearing. Thus, on October 29,

2012, OAH granted the parties a one-day continuance, and the due process hearing was set to begin on October 30, 2012, rather than October 29, 2012.

Now, District has requested another continuance of the due process hearing date. District based this newest request on the ground that District and its witnesses are unprepared to go to hearing at this time, due to the murder of a District teacher by a one of District's students. The attorney for District indicated that the impact of the "homicide" has put District in crisis and, as such District, its representatives and witnesses, would be unable to participate in the hearing as scheduled. Thus, District requests that the hearing dates be continued to the week of November 12, 2012.

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).) 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).)

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

Denied. All hearing dates and timelines shall proceed as calendared.

Here, while the occurrence of a homicide involving District's community clearly merits consideration, this alone is not enough when one considers the mandate of the IDEA requiring due process hearing to be held timely. District fails to show good cause for granting additional continuances in this matter. For example, nothing indicates that District has shut down for the week, or that the attorney or witnesses are unavailable to be to testify on the dates set for this hearing.

Therefore, as indicated above, the request to continue is denied. The hearing will commence at 1:30 p.m., on October 30, 2012.

IT IS SO ORDERED.

Dated: October 30, 2012

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings