

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BURLINGAME ELEMENTARY SCHOOL  
DISTRICT.

OAH CASE NO. 2012041072

ORDER DENYING REQUEST TO  
VACATE HEARING DATES AND TO  
SET TRIAL SETTING CONFERENCE

On September 18, 2012, Student filed a request with the Office of Administrative Hearings (OAH) to vacate the Prehearing Conference (PHC) and due process hearing dates and to set a trial setting conference in this matter based upon the parties' pending settlement that needed to be reduced to writing. The Burlingame Elementary School District did not file a response.

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. Student did not establish good cause to vacate the pending PHC and hearing dates without a signed written settlement agreement, or a reason why a delay exists in the parties executing such a written settlement agreement. However, Student established

good cause for a continuance of the PHC to permit the parties to finalize the settlement agreement while the hearing dates remain as calendared.

Prehearing Conference: September 24, 2012, at 1:30 PM

IT IS SO ORDERED.

Dated: September 19, 2012

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings