

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

POWAY UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012051032

ORDER GRANTING MOTION FOR
CONTINUANCE AND SETTING
PREHEARING CONFERENCE AND
DUE PROCESS HEARING DATES

On May 24, 2012, Parent on behalf of Student (Student) filed a due process hearing request (complaint) naming the Poway Unified School District (District) as respondent. On May 25, 2012, the Office of Administrative Hearings (OAH) issued a scheduling order setting Mediation for June 28, 2012, a Prehearing Conference on July 11, 2012, and Due Process Hearing for July 18, 2012.

On June 8, 2012, the District filed a Notice of Insufficiency and motion to dismiss issues which are outside of the jurisdiction of the OAH. OAH issued an order finding the complaint sufficient on June 11, 2012. On June 14, 2012, OAH issued an order granting the District's motion to dismiss.

On June 18, 2012, Student filed with OAH a request to issue eight subpoenas to compel attendance of witnesses at hearing. Of the eight subpoenas requested, six are for employees of the District.

On June 21, 2012, the District filed a motion to continue the Prehearing Conference and Due Process Hearing dates in this matter based upon the unavailability of District witnesses due to the summer recess and the two week vacation of the District's counsel. On June 26, 2012, Student filed an opposition to the motion based upon grounds of failure to demonstrate good cause, delay, and that since the District's counsel is from a large law firm, he can be replaced by another attorney from that firm.

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:

Granted. All dates are vacated. This is the first request for continuance and the unavailability of District witnesses may prevent each side from presenting their cases fully. Student's contention that the unavailability of the District's counsel can be remedied by replacing him with another attorney from his "large law firm" is without merit. This matter will be set as follows:

Prehearing Conference: August 29, 2012 at 10:00 AM
Due Process Hearing: September 4-6, 2012 at 9:30 AM

Please note that the Mediation of June 28, 2012 will go forth as scheduled.

IT IS SO ORDERED.

Dated: June 27, 2012

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings