

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2013010033

v.

FRESNO UNIFIED SCHOOL DISTRICT,

FRESNO UNIFIED SCHOOL DISTRICT,

OAH CASE NO. 2012120631

v.

PARENT ON BEHALF OF STUDENT.

ORDER GRANTING IN PART
REQUEST FOR CONTINUANCE AND
SETTING PREHEARING AND
HEARING DATES

These matters are currently set for a consolidated due process hearing on March 12 through 14, 2013 and March 19 through 20, 2013, and a prehearing conference on March 4, 2013. On February 11, 2013, Student filed with the Office of Administrative Hearings (OAH) a request to continue the dates in this matter until May 2013 based upon the need for additional time to prepare for hearing due to the complexity of the case and Student's involvement in three current Fresno County Superior Court cases.¹ On February 14, 2013, Fresno Unified School District (District) opposed the request based upon Student's failure to demonstrate good cause. The District failed to identify any prejudice it would suffer if OAH continued the matter. OAH has granted two prior continuances at the request of the District.

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

¹ Student lists additional allegations irrelevant to his motion including: the District has moved to change the venue to a room that does not have a functioning air conditioning system; the District is trying to "pull a fast one" on OAH; the District previously requested two continuances; and, the District has filed a number of motions to cause delay.

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. Student's involvement in the Fresno County Superior Court case of *John Doe v. Fresno Unified School District* does not constitute good cause for a continuance. Although Student's attachments reflect that Student had a recent court appearance with counsel, he fails to provide any evidence of future court dates that interfere with his ability to participate in his current due process hearing. Similarly, Student's involvement as real party in interest in *Fresno Unified School District v. Fresno County Board of Education* also does not constitute good cause for a continuance. That matter is on remand to the Fresno County Office of Education for the issuance of adequate findings based upon the existing administrative record. It is pure speculation whether and when Student, through his counsel, will need to take any further action in that case.

Student has established good cause for a brief continuance to allow additional time to prepare for the consolidated hearing based upon the complexity of the case, the fact that Student is not represented by counsel, the recent January 22, 2013 Order granting consolidation which Student received on January 24, 2013, and Student's need to attend and participate in a juvenile delinquency proceeding on February 28, 2013, which will interfere with Student's ability to fully and timely prepare for the PHC and hearing in this matter.²

However, Student has not established good cause to continue this matter until the month of May. Student speculates that his juvenile delinquency proceeding may continue throughout the month of March, "depending on the overcrowded Fresno County Superior court calendar." It is just as likely the Juvenile Court may continue the adjudication of Student's delinquency petition to a different date. Student does not provide sufficient evidence in support of his request that this matter not be calendared for the entire month of April due to a family member's need for surgery in the Bay area sometime during that month.

For the above stated reasons, Student's request for a continuance is:

Granted in part. All dates are vacated. This matter will be set as follows:

² Student refers to this matter as a "criminal" case. Student's attachment indicates this is a juvenile delinquency proceeding.

Prehearing Conference: March 11, 2013 at 1:30 PM

Due Process Hearing: March 18, 2013 at 1:30 PM, March 19 through 21, 2013 at 9:00 AM, March 25, 2013 at 1:30 PM, and March 26, 2013 at 9:00 AM, then continuing day-to-day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.³

IT IS SO ORDERED.

Dated: February 15, 2013

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

³ Student indicates he will need 15 to 20 days to present his case. It will be up to the Administrative Law Judge how many days are allotted. Both parties shall be prepared to discuss this at the PHC.