

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FAIRFIELD-SUISUN UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2013030894

ORDER GRANTING REQUEST FOR  
CONTINUANCE OF MEDIATION  
AND MAINTAINING ALL OTHER  
DATES

On April 4, 2013, Tanya L. Whiteleather, attorney for Student, and Van T. Vu, attorney for the Fairfield-Suisun Unified School District, filed a joint request to continue the mediation in this matter to May 8, 2013. The parties did not request a continuance of any other dates in this matter. Currently, the prehearing conference (PHC) in this matter is set for May 8, 2013, and the due process hearing is set for May 16, 2013. While the Office of Administrative Hearings (OAH) staff is not required to do so, staff did inquire as to whether the parties intended to continue the May 8, 2013 PHC. Ms. Whiteleather's office informed OAH staff that they did intend to continue the PHC, but did not provide a written request or proposed dates.

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, as to the mediation only. The parties did not submit a written request to continue either the PHC or the due process hearing. OAH is not in the business of guessing whether a party wants a proceeding continued and what date the party would desire. Accordingly, the PHC and due process hearing dates in this matter are maintained as calendared. If the parties desire a continuance of those dates, the parties may file another request. Absent such a request, and an order granting a request, **the parties are expected to appear at the May 8, 2013 PHC, regardless of whether they are in mediation on the same date.** This matter will be set as follows:

Mediation:	May 8, 2013, at 9:30 AM
Prehearing Conference:	May 8, 2013, at 10:00 AM
Due Process Hearing:	May 16, 2013, at 9:30 AM, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

IT IS SO ORDERED.

Dated: April 10, 2013

/s/

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BOB N. VARMA  
Presiding Administrative Law Judge  
Office of Administrative Hearings