

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

VISALIA UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2014110948

ORDER GRANTING STUDENT'S
REQUEST FOR CONTINUANCE AND
SETTING PREHEARING
CONFERENCE AND HEARING
DATES

On February 5, 2015, Student filed a request to continue the dates in this matter so he could retain counsel and allow that counsel approximately 45 days to prepare for hearing. This matter is currently set for hearing beginning March 2, 2015. On February 6, 2015, Visalia Unified School District opposed the request asserting that Student failed to establish good cause due to: 1) Parent's experience in representing Student in a prior due process hearing; 2) Parent's knowledge of the legal process given his own experience as an attorney and in having previously worked with an attorney regarding Student's educational records in 2013; 3) Parent's delay in requesting this second continuance; and 4) the length of time this matter has been pending. Further, Visalia argues that it would be prejudiced by a further continuance given the length of the continuance request, schedule disruption, and a possible need to substitute counsel given the summer relocation plans of Visalia's current counsel.

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).) The Office of Administrative Hearings 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. Having weighed the equities, the request is:

Granted. All dates are vacated. This matter was originally scheduled to begin hearing on December 16, 2014. The parties already agreed to a lengthy continuance of 11 weeks at their mediation on December 4, 2014. Although OAH is sympathetic to Visalia's position and agrees that Parent should have arranged earlier for legal representation, OAH will allow one further continuance to afford Student an opportunity to obtain counsel.

Student is advised that no further continuances will be granted absent a showing of substantial good cause unrelated to Student's need to secure legal representation, need for additional time to prepare for hearing, or other foreseeable calendaring conflicts. Student shall inform any potential counsel of the new hearing dates and this Order.

This matter will be set as follows:

Prehearing Conference: March 27, 2015 at 10:00 a.m.

Due Process Hearing: April 1, 2015,¹ at 9:30 a.m., April 2, 2015, at 9:00 a.m., April 7, 2015,² at 9:30 a.m., and April 8, 2015, at 9:00 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

IT IS SO ORDERED.

DATE: February 6, 2015

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

¹ In general, OAH calendars hearing dates on consecutive days, Monday through Thursday. Hearings may proceed into a Friday at the discretion of the ALJ presiding at the hearing. OAH declines to calendar this case to begin on a Thursday.

² OAH is not available for hearings on the first Monday of the month.