

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

HOLLISTER SCHOOL DISTRICT.

OAH Case No. 2015070619

ORDER GRANTING REQUEST FOR  
BRIEF CONTINUANCE OF DUE  
PROCESS HEARING

On March 4, 2016, Hollister School District filed a request to continue the dates in this matter with the Office of Administrative Hearings, based upon unavailability of counsel. On March 4, 2016, Student opposed the request claiming good cause was not shown, and that Student would be prejudiced by a continuance.

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.

Student correctly asserts in his opposition to the continuance that this is the fourth continuance being requested in this matter, and that this matter has been pending since June 24, 2015. The first continuance was granted following receipt of a joint request for a

continuance in July 2015. The second continuance was granted in October 2015, to January 2016, after the parties reached an interim agreement in mediation. In January 2016, the attorney for Hollister had a family emergency, and Student did not oppose the request for continuance. The matter was continued so that the due process hearing would commence on March 8, 2016, at 9:30 a.m.

Hollister's attorney, is asking for a continuance of this hearing because she began another due process hearing on February 23, 2016, which was expected to be concluded that week. However, the matter began on February 23, 2016, but had to be continued to March 1, 2016. That hearing went forward on March 2 and 3, 2016, but on March 2, it became apparent that at least one more day of hearing was needed beyond March 3, 2016. Counsel for Hollister sent counsel for Student an email with this information the night of March 2, 2016. After the hearing proceeded on March 3, that case was continued to March 8, 2016. It is possible another day of hearing may also be needed in that matter.

As previously noted, the due process hearing in this matter is set to begin at 9:30 a.m. on March 8, 2016. The attorney for Hollister is asking for a one-week continuance to March 15, 2016, due to her calendaring conflict. Although Student argues that Hollister's attorney is employed by a firm with multiple attorneys who should be able to take over the case so hearing could begin on March 8, 2016 as scheduled, special education cases tend to be very fact-intensive with complex legal issues. It would be prejudicial to Hollister for it to begin the hearing on March 8, 2016, with an attorney who is not as familiar with its case as is its current attorney. Accordingly, a brief continuance to March 15, 2016 is granted.

This matter will be set as follows:

Due Process Hearing:            March 15, 2016, at 9:30 a.m., and March 16 and 17, 2016, at 9:00 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

IT IS SO ORDERED.

DATE: March 4, 2016

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REBECCA FREIE

Administrative Law Judge

Office of Administrative Hearings

