

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

COLTON JOINT UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015090427

ORDER GRANTING IN PART AND
DENYING IN PART REQUEST FOR
CONTINUANCE AND SETTING DUE
PROCESS HEARING DATES

On March 4, 2016, legal counsel for Colton Joint Unified School District made an oral motion for a continuance at the prehearing conference, claiming the unavailability of District personnel and counsel at various times during March 2016. District filed a written motion two days later, at 10:00 p.m., with the Office of Administrative Hearings. On March 8, 2016, Student opposed the request based upon the lateness of District's request and failure to establish good cause to continue this hearing for six weeks.

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 in Part and Denied in Part. All dates are vacated. Student filed this matter on September 4, 2015. Student's case was then consolidated with District's case, which was later dismissed. The hearing regarding this case has been continued several times,

plus Student has filed two amended complaints, which has reset the hearing timeline and moved back the hearing date. The hearing date in this matter, March 16, 2016, was set by OAH in its January 21, 2016 scheduling order, after OAH granted Student's motion for a second amended complaint that same day. District did not establish good cause for a six week continuance as the hearing dates in OAH Case No. 2016010014, were set at the February 19, 2016 PHC in that matter. District's legal counsel should have asked for a continuance in this case soon after the PHC in OAH Case No. 2016010014. However, District did establish good cause for a brief continuance due to District's spring break during the week of March 21, 2016 and unavailability of District witnesses. **NO FURTHER CONTINUANCES OR AMENDMENTS TO THE COMPLAINT WILL BE GRANTED.** Therefore, this matter will be set as follows:

Due Process Hearing: March 29, 2016, at 9:30 AM, March 30, 2016, at 9:00 AM, April 5, 2016, at 9:30 AM, April 6¹ and 7, 2016, at 9:00 AM, 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 9, 2016

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Peter Paul Castillo
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PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings

¹ This matter takes precedent over OAH Case No. 2015100606, which involves Student's legal counsel, as the hearing date of April 6, 2016, is the initially set date after OAH granted Student's motion to amend on February 9, 2016, in OAH Case No. 2015100606.