

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WILLIAM S. HART UNION HIGH  
SCHOOL DISTRICT.

OAH Case No. 2016030901

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

On May 13, 2016, the parties filed a joint request to continue the initially set non-expedited hearing dates in this matter with the Office of Administrative Hearings. The request did not explain why the continuance was necessary.

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. Student filed his dual complaint, with expedited and non-expedited claims, on March 21, 2016. OAH issued ALJ Cole Dalton's decision on the expedited claims on May 10, 2016. The PHC for the non-expedited claims was held by ALJ Dalton on May 9, 2016. During the PHC, counsel for District opined that OAH should hear the issue of whether returning Student to his placement after expiration of the 45-day interim alternative educational setting was substantially likely to result in injury to the child or to others. District had not filed a complaint on this issue, as required, under 20 U.S.C. § 1415(k)(3)(A). District stated that it may file a complaint and seek to have it consolidated with Student's

action. District was advised that a complaint on the “substantially likely” issue could be filed at any time and that it would not need to be consolidated with Student’s action. Any such complaint would be heard on an expedited basis, under 20 U.S.C. §1415(k)(3)(A), and subdivision (k)(4). (See also 34 C.F.R. 300.532(a), through (c).)

The parties filed a last minute request for continuance well after the PHC was held, without providing any explanation. Typically, such requests are denied. Because this is a first request for continuance, made by counsel on behalf of both parties, the request is granted in part and denied in part, as follows:

All dates are vacated. However, the parties requested the hearing proceed on a Friday and the OAH is dark for hearings on Fridays. This matter will be set as follows:

Prehearing Conference: August 22, 2016, at 10:00 a.m.  
Due Process Hearing: August 31, 2016, at 9:30 a.m., September 1, 7, and 8, 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: May 16, 2016

DocuSigned by:

*Cole Dalton*

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COLE DALTON

Administrative Law Judge 57CDEBDA C9CC499...

Office of Administrative Hearings