

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2016040419

ORDER DENYING REQUEST FOR A
SETTLEMENT CONFERENCE, AND
CONTINUING THE PREHEARING
CONFERENCE

On May 23, 2016, Student filed a request to vacate dates for a prehearing conference and due process hearing, and asked that a status conference be set instead. He indicated that Parents had signed a settlement agreement, and once the representative from Mt. Diablo Unified School District had signed the agreement, the matter would be dismissed. The PHC in this matter is currently set for May 23, 2016, at 3:00 p.m., and the due process hearing is set to begin on June 1, 2016. A status conference will only be scheduled when the parties submit a fully executed settlement agreement that is contingent upon Board approval. The request to schedule a status conference at this time is denied. However, based upon the representations made by the parties it will be considered a motion to continue.

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 for a continuance is:

Granted. In this case, the parties are awaiting signatures from Mt. Diablo, and according to the request, the signatures may not be obtained until May 24, 2016. However, OAH is willing to continue the PHC to Friday, May 27, 2016.

Prehearing Conference: May 27, 2016, at 3:00 p.m.
Due Process Hearing: June 1, 2016, at 9:30 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 23, 2016

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REBECCA FREIE

Administrative Law Judge
Office of Administrative Hearings