

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:  PARENT ON BEHALF OF STUDENT,  v.  PASADENA UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2012010154
PARENT ON BEHALF OF STUDENT,  v.  PASADENA UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2012031285  ORDER GRANTING STUDENT'S REQUEST FOR CONTINUANCE AND SETTING PHC & HEARING

On May 16, 2012, Student filed a request for a continuance in these consolidated matters. For some reason, Student's attorney believed that she was not required to proceed to hearing in both matters, despite the matters involving the same Student and District, despite having requested the May 22, 2012 hearing start date in case number 2012010154, and despite being given notice by OAH on March 30, 2012 that the hearing in case number 2012031285 would begin May 22, 2012, and continue day-to-day, Monday through Thursday until completed. Despite the above notice, Student's counsel claims that she was surprised and/or was not prepared for hearing because the matters were consolidated by OAH at the pre-hearing conferences in both matters, which had been set for the same time. Despite the above representations in this motion to continue, Student's counsel stated exactly the opposite in three other OAH matters, 2012021082, 2012030702, and 2012031076. In those three matters, Student's counsel filed something called a "Notice of Counsel's Unavailability,"<sup>1</sup> in which she stated she was unavailable because she would be in hearing on the instant consolidated matters. Similarly, as of May 21, 2012, Student's counsel filed a request for a continuance of the May 22, 2012 hearing start in OAH case number

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<sup>1</sup> OAH interprets the "Notice of Counsel's Unavailability" as a motion for a continuance because attorneys, as is expected in courts and other administrative proceedings, are expected to manage their own calendars to prevent conflicts. OAH provides ample opportunities for parties to set hearings on mutually available dates through the request for continuance process. The only other interpretation for the "Notice of Counsel's Unavailability" would be a notice of attorney substitution.

2012030702, on the ground that she will be in hearing in these consolidated matters. Student's counsel did not provide suggested hearing dates if her continuance request was granted in these matters.

On May 18, 2012, District filed a reply to the motion for a continuance. In its reply, District stated that although it was prepared for hearing, it was not opposed to a continuance provided that it resulted in the hearing commencing in September, when it could assure that all required District personnel were available.

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. Here, OAH rejects any argument by Student's counsel that it is responsible for her being unprepared for hearing. May 22, 2012 was a hearing date chosen by Student's counsel in a stipulated continuance request in case number 2012010154, and at all times, the scheduling order in case number 2012031285 stated that the matter would begin May 22, 2012, and continue day-to-day, Monday through Thursday until completed. The matters involved similar issues with the same Student and District, so there would be no reason not to consolidate them, and consolidation should have no impact on preparation given the notice of hearing dates. However, OAH accepts the representation that Student's counsel is presently not prepared for hearing in these matters. That, in addition to the other scheduling conflicts of Student's counsel, and District's qualified non-opposition to a continuance, provides good cause. Because Student did not identify available dates, and District did, this matter will be set in September of 2012 in order to give Student's attorney ample time to arrange her calendar so that she is available and prepared for hearing. It is expected that Student's counsel will use the request for continuance process in any other OAH matters she schedules so that she will be available for all hearing dates. No further continuances will be granted for any reason. This matter will be set as follows:

Prehearing Conference: September 5, 2012 at 1:30 PM  
Due Process Hearing: September 10-13, 17-20, 2012 at 1:30 PM first day,  
9:00 AM after.

IT IS SO ORDERED.

Dated: May 21, 2012

/s/

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RICHARD T. BREEN  
Presiding Administrative Law Judge  
Office of Administrative Hearings