

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012010705

ORDER DENYING CONTINUANCE
AND REASSIGNING MATTER FOR
DECISION

This matter was filed on January 24, 2012. A due process hearing was held before Administrative Law Judge (ALJ) Gary A. Geren on April 10 through 13, and April 24, 2012. On or about May 1, 2012, ALJ Geren became unavailable. On May 4, 2012, the Office of Administrative Hearings (OAH) conducted a status conference with the parties and informed the parties of ALJ Geren's unavailability. Based upon the discussions, the parties requested, and were granted, a continuance in this matter so that ALJ Geren would be available to write the decision following the due process hearing.

On June 4, 2012, a further status conference was held by OAH to discuss ALJ Geren's continued unavailability. Again, at the request of the parties another continuance was granted in order to allow ALJ Geren to return and write the decision in this matter. At both the May 4 and June 4, 2012 status conferences, the parties were informed that OAH was ready and willing to assign the matter to another ALJ who would review the evidence, listen to the hearing, consider the closing arguments and render a written decision.

On July 2, 2012, a further telephonic status conference was held before the undersigned. Parent appeared on behalf of Student, and was assisted by advocate Debra Hammond. Sang-Jin Nam, Attorney at Law, appeared on behalf of the Fresno Unified School District (District).

The parties were informed that based upon the current information that OAH has, ALJ Geren is unavailable until July 27, 2012. The parties were further informed that OAH does not have a specific return date for ALJ Geren. The decision in this matter is due on August 3, 2012. At this time ALJ Geren cannot render a written decision by August 3, 2012. OAH informed the parties that it intended to reassign this matter to another ALJ. Parent requested another continuance in order to allow for ALJ Geren's return. District opposed the motion.

APPLICABLE LAW

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).) The Office of Administrative Hearings (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).)

DISCUSSION

As mentioned above, this matter was filed on January 24, 2012. If another continuance is granted, as the undersigned informed the parties, by the time the decision is rendered, more than eight months will have passed since the filing of the complaint. Furthermore, at this time it is unknown when ALJ Geren will return, as no return date has been provided to OAH. Previously, ALJ Geren's unavailability has been extended and there is no guarantee that it will not be further extended.

Parent expressed concerns that reassignment of the matter to another ALJ will deny Student due process. Parent bases the contention upon the grounds that only the ALJ who heard the matter should render the written decision. District contends that there is no guarantee that ALJ Geren will return in time to render a decision by August 3, 2012. District asserts that while it too would like the ALJ who heard the matter to render the written decision, further delay of the decision is prejudicial to District as it is entitled to a speedy resolution.

Student has failed to show that due process will be denied if another ALJ listens to the testimony, reviews the evidence and closing arguments, and prepares a decision. Student's motion to continue is denied and this matter is reassigned to ALJ Deidre Johnson.

ORDER

1. Student's motion to continue is denied.
2. This matter is reassigned to ALJ Deidre Johnson.
3. The decision in this matter shall be rendered by August 3, 2012.
4. The parties have until 5:00 p.m. on July 9, 2012, to file a peremptory challenge under California Code of Regulations, title 1, section 1034.

Dated: July 3, 2012

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings