

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012020842

ORDER GRANTING REQUEST FOR
CONTINUANCE AND SETTING
MEDIATION, PREHEARING
CONFERENCE AND HEARING
DATES

This matter is set for a one-day hearing on Thursday, April 12, 2012. On March 30, the Fresno Unified School District (District) filed with the Office of Administrative Hearings (OAH) a request to continue the dates in the unexpedited portion of this matter. On April 2, 2012, Parents on behalf of Student (Student) filed an opposition to the motion.

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. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

Student filed a request for due process (complaint) on February 22, 2012. On February 27, 2012, OAH served a Scheduling Order on the parties that set an expedited hearing on disciplinary issues for March 21, 2012 (which has concluded), and a nonexpedited hearing on all other special education issues on April 12, 2012. A prehearing conference (PHC) on the nonexpedited case is set for April 4, 2012. This the first continuance request in the nonexpedited case.

District requests a continuance due to claimed scheduling conflicts with two other cases set for hearing before OAH during the week of April 10, 2012. In addition, District contends the hearing will take three days, from April 12, through 14, 2012. Student objects that District's motion is late, does not show good cause, and would be prejudicial to Student.

Attached to the OAH Scheduling Order served on February 27, 2012 was an OAH form for the parties to use to continue the initial hearing date. The form provides that the parties may agree upon dates within 90 days of the initial hearing date, and that, if the parties cannot agree on the dates, each side should submit proposed dates, or request OAH to set hearing dates within 90 days of the first date. Here, Student opposes any continuance. Neither party has submitted to OAH any proposed new dates for hearing or disclosed any future date conflicts. In addition, following receipt of the Scheduling Order, neither party notified OAH that more days were required for the nonexpedited hearing.

Case Number 2012010705

District's motion and OAH's docket establish that District is now scheduled for hearing in OAH Case Number 2012010705, on April 10, 11, and 12, 2012. The initial hearing date in that case was March 19, 2012. The record establishes that District opposed the family's motion for a continuance of that date. However, on March 9, 2012, OAH granted a continuance and set new dates of April 10, and 11, 2012. At that time, pursuant to the February 27, 2012, Scheduling Order in the present case, only one day, April 12, 2012, was scheduled for hearing. Thus, the mere fact that District would have back-to-back hearings does not present a conflict and does not render District or its counsel as unavailable. In Case Number 2012010705, OAH did not add the third date of April 12, 2012, until a PHC was conducted on April 2, 2012, after District filed its motion in this case. Thus, District's motion for a continuance based on any conflict with that case is denied. The hearing in Case Number 2012010705 is going forward, and that hearing will begin on April 10, 2012.

Case Number 2012020778

District is also scheduled for a one-day hearing on April 12, 2012, in OAH Case Number 2012020778.¹ OAH filed the Scheduling Order in that case on February 23, 2012, and it was therefore scheduled prior to the present case. District's claim that the case is set for three days, from April 12 (a Thursday), through April 14 (a Saturday), 2012, is not supported by OAH's docket or files. On April 2, 2012, the family filed a motion for a continuance. District is entitled to file a reply with OAH on or before April 5, 2012. Since OAH has not granted a continuance in the second case, it is still scheduled for hearing on the same date as that set for this case. Based on the foregoing, the District and its counsel are presently unavailable to appear in this case on April 12, 2012. Even if a continuance is granted in that case, the present case requires three days for hearing. An Administrative Law Judge (ALJ) from OAH will travel to Fresno for the hearing. In the circumstances of this case, judicial economy and conservation of resources are supported by setting the matter for three consecutive days rather than having the hearing start on Thursday, April 12, 2012, and

¹ Based on the circumstances of all three cases and when the requests for due process were filed, OAH was required to follow the law to promptly schedule initial hearing dates. It was incumbent upon the parties to promptly notify OAH whether they needed to add more days for hearing, or whether there were scheduling or preparation conflicts involved.

then continuing it to later dates.² Therefore, District's conflict and request for more hearing days constitute good cause for a continuance unless circumstances indicate otherwise.

Student claims that a continuance would be prejudicial because he is in a "temporary" placement and the school year is almost over. However, Student did not submit any evidence to substantiate his claim that he will be injured by remaining in his current placement for the rest of the school year. Moreover, District does not purport to ask for a lengthy continuance. Finally, Student's claim that either he or OAH should arrange continuances of other hearings pertaining to different pupils is irrelevant, as continuance motions are evaluated on a case-by-case basis.

Based on the foregoing, District's request for a continuance shows good cause to continue the hearing to dates prior to the end of the school year, as ordered below.

OAH has reviewed the request for good cause and the request is:

Granted. All dates are vacated. This matter will be set as follows:

Mediation: April 25, 2012, at 9:30 AM

Prehearing Conference: May 7, 2012, at 1:30 PM

Due Process Hearing: May 15, 16, and 17, 2012, at 9:00 AM

IT IS SO ORDERED.

Dated: April 03, 2012

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

² OAH is unavailable to hold hearings during the week of April 16, 2012, due to annual ALJ training.