

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FAIRFIELD SUISUN UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012030917

ORDER DENYING REQUEST TO  
STAY PROCEEDINGS; GRANTING  
REQUEST FOR CONTINUANCE, AND  
SETTING DUE PROCESS HEARING

On June 1, 2012, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Deidre L. Johnson. During the PHC, the ALJ considered the Fairfield-Suisun Unified School District's (District) motion to stay the proceedings in this matter so that District may consider whether it intends to appeal the final expedited decision, rendered in a separate bifurcated portion of this matter. ALJ Johnson tentatively denied the motion, but provided the parties additional time to submit further briefing on the issue. District was granted until close-of-business on June 5, 2012, and Student was granted until close-of-business on June 7, 2012.

On June 4, 2012, Student filed an opposition to District's motion to stay the proceedings. On June 5, 2012, District filed a reply to Student's opposition. District did not provide any new legal authority or argument pursuant to ALJ Johnson's discussions at the June 1, 2012 PHC. It merely stated that it did not intend to change or supplement the pleadings it had already filed.

On June 4, 2012, Student filed a request to continue the dates in this matter, concurrently with his opposition to District's motion to stay the proceedings. Student contends that a continuance is warranted because both parties desire time to determine if they wish to appeal the final decision in the expedited portion of this matter; Student has filed a separate motion to amend his complaint and requires further time to file an amended complaint; and, Student intends to file a separate complaint concerning a manifestation determination on May 25, 2012, (erroneously stated as "May 25, 2011" in Student's motion) and will seek to consolidate that case with this matter. On June 5, 2012, District, concurrently with its reply to Student's opposition to the motion to stay the proceedings, filed a statement of non-opposition to Student's motion to continue this matter. It stated that District was in agreement with Student's request to continue the hearing.

## APPLICABLE LAW AND DISCUSSION

### *Motion to Stay Proceedings*

Education Code section 56505, subdivision (h) provides that the administrative decisions in special education due process cases are final, notwithstanding subdivision (k)'s provision for appeal. The Individuals with Disabilities Education Act and related state statutes do not provide authority for the Office of Administrative Hearings (OAH) to stay a matter to allow a party its full 90 days to consider whether it intends to appeal a final decision in a bifurcated portion of the case. Were a court of competent jurisdiction to issue an order staying an administrative proceeding before OAH, it would be a different matter. However, that is not the case here and District has failed to provide any further legal authority or argument as permitted by ALJ Johnson during the June 1, 2012 PHC. Accordingly, ALJ Johnson's tentative ruling is adopted and District's motion to stay the proceedings is denied.

### *Request for Continuance*

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).)

Student's motion to amend his complaint is currently pending. If granted, it would reset the time lines for issuance of a final decision in this matter. Furthermore, Student intends to file a new case concerning the manifestation determination and intends to seek consolidation. If consolidation is granted, it may impact the time lines for issuance of a final decision in this matter. However, these are contingencies that may occur in the future and may impact the scheduling in this case. On the other hand, District does not oppose Student's request for a continuance and instead agrees with the request. Accordingly, the motion is treated as a joint request and is granted. The hearing in this matter is continued to August 28 through 30, 2012, and September 4 through 5, 2012.

ORDER

1. District's motion to stay the proceedings is denied.
2. The parties request to continue is granted. The due process hearing in this matter shall take place on August 28 through 30, 2012, and September 4 through 5, 2012. The hearing shall commence at 9:30 a.m. on each day, except for September 4, 2012, when it shall commence at 1:30 p.m., unless otherwise ordered.

Dated: June 6, 2012

/s/

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