

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CONSERVATOR ON BEHALF OF
STUDENT,

v.

FREMONT UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012070075

ORDER GRANTING REQUEST FOR
CONTINUANCE AND SETTING
PREHEARING CONFERENCE AND
DUE PROCESS HEARING

This matter was set for a prehearing conference (PHC) on October 15, 2012. Eileen Matteucci and Roberta S. Savage, Attorneys at Law, appeared on behalf of Student. Deborah Ungar Ettinger, Attorney at Law, appeared on behalf of the Fremont Unified School District (District). Prior to the PHC, counsel and the undersigned discussed the status of this matter, consistent with the Office of Administrative Hearings' (OAH's) order of October 12, 2012. The PHC was not held and the matter was not recorded.

The parties have reached a final settlement agreement in this matter. District's school board has approved the settlement agreement. However, due to Student being under a conservatorship, the parties are engaged in the process of obtaining approval of the settlement by the Alameda County Superior Court. OAH requested the parties provide legal authority, court order or other documentation that they believe allows OAH to retain jurisdiction over this matter. Student requested additional time to file the requisite documentation. District did not oppose Student's request.

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. This matter will be set as follows:

Prehearing Conference: November 7, 2012, at 10:00 AM
Due Process Hearing: November 13, 2012, at 1:30 PM, and continuing
day to day, Monday through Thursday, as needed at
the discretion of the Administrative Law Judge.

IT IS SO ORDERED.

Dated: October 15, 2012

/s/

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