

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BERKELEY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012090769

ORDER GRANTING REQUEST FOR
CONTINUANCE AND SETTING NEW
PREHEARING CONFERENCE AND
HEARING DATES

Hearing in this matter is currently set for January 14, 2013 with a prehearing conference (PHC) on January 7, 2013. On January 4, 2013, the parties filed a second joint request to continue the dates in this matter based upon their continued mediation discussions and the unavailability of counsel for the Berkeley Unified School District (District) due to her “presentation at ACSA” which requires her to be in Monterey from January 15 through 17, 2013.

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).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

Granted. All dates are vacated. Counsel did not explain when she became aware of her scheduling conflict or whether another attorney in her office could participate in the presentation for her or conversely handle this hearing for the District. The request to continue due to counsel's appearance at a conference does not establish good cause. However, the representation that the parties are working on a settlement and because the request is for a short continuance, the request for continuance is granted. This matter will be set as follows:

Prehearing Conference: February 13, 2013 at 1:30 PM

Due Process Hearing: February 25, 2013 at 1:30 PM, and February 26 through 28, 2013 at 9:00 AM.

IT IS SO ORDERED.

Dated: January 7, 2013

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings