

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ATASCADERO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012100746

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

This matter is set for a due process hearing to begin on April 22, 2013, with a prehearing conference on April 15, 2013. On March 26, 2012, Student filed with the Office of Administrative Hearings (OAH) a request to continue the above dates, representing that Atascadero Unified School District (District) joined in the request. District did not file a response. Student represents that the parties have agreed to request a continuance to reschedule mediation before incurring the costs of hearing preparation and going to hearing.

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.) 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).) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

This the third continuance request in this case, filed by Student on October 17, 2012. The parties agreed to the currently scheduled dates in connection with mediation on December 19, 2012, and also agreed to a continued mediation on March 20, 2013. OAH thereafter issued a scheduling order on December 31, 2012. The parties cancelled the March 20, 2013 mediation due to a scheduling conflict with another case before OAH. Student requests a new mediation date of Tuesday, April 9, 2013, as agreed to by District.

In addition, Student requests that the hearing be continued to the week of June 3, 2013, a delay of about six weeks.¹ Student explains that these dates were negotiated as the next available hearing dates for both Student's and District's attorneys. Student represents that the parties are negotiating complex behavioral issues including a referral to the California Diagnostic Center. Accordingly, OAH will support the settlement process and afford the parties the opportunity to conduct mediation prior to hearing. However, since the case has been pending since October 2012, the parties are cautioned that any further continuance would require a substantial showing of good cause.

1. Continuance: OAH has reviewed Student's request for good cause and the request is:

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

Mediation: April 9, 2013, at 9:30 AM

Prehearing Conference: May 22, 2013, at 1:30 PM

Due Process Hearing: June 4, 2013, at 9:30 AM, and
June 5 and 6, 2013, at 9:00 AM, and continuing
thereafter day to day, Monday through Thursday, as
needed at the discretion of the Administrative Law
Judge.²

2. Other Matters: All other matters relevant to preparing for hearing, including clarification of issues and identification of witnesses and exhibits, will be addressed at the continued prehearing conference.

3. Notice to Witnesses: The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for

¹ Student's motion requests the week of June 1, 2013; however, the first week in June begins on Monday, June 3, 2013.

² In connection with the continued prehearing conference, the parties shall be prepared to provide specific estimates of the expected length of the hearing.

purposes of showing good cause to continue the hearing if the witness has not been properly notified of the hearing date or subpoenaed, as applicable.

4. Settlement: Dates for the prehearing conference and the hearing will not be cancelled until a letter of withdrawal or request for dismissal with the signature page of a signed settlement agreement has been received by OAH. If the settlement agreement has been executed but is subject to approval of the school board, the parties may file a motion for OAH to vacate the hearing dates and set a telephonic status conference for a date following board approval. If an agreement in principle is reached, the parties should attend the scheduled prehearing conference and the hearing unless different arrangements have been agreed upon by the assigned Administrative Law Judge or otherwise ordered by OAH.

IT IS SO ORDERED.

Dated: April 2, 2013

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings