

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

HAYWARD UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012110597

ORDER GRANTING IN PART AND
DENYING IN PART REQUESTS FOR
CONTINUANCE AND SETTING
PREHEARING CONFERENCE AND
HEARING.

On December 28, 2012, Hayward Unified School District (District) filed a request to continue the dates in this matter. Student subsequently filed her own request for a continuance on December 28, 2012. The parties are requesting the same dates for a prehearing conference (PHC) and due process hearing. Accordingly, the motions are deemed to be a joint request for continuance. However, Student has also requested a mediation date as well, and this was not requested by the District, so that request will be denied without prejudice.

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:

☒ Partially granted and partially denied. All dates are vacated. This is the first request for continuance from the parties. Further, the District has been hampered in preparing for the PHC currently set for 10:00 a.m. on December 31, 2012, by the fact that the District's offices have been closed for winter break since December 22, 2012. In addition, Student's attorney had verbally advised the District's attorney that she would agree to a continuance, but did not return a signed joint request for continuance form to Student when it was sent to her for signature.

This matter will be set as follows:

Prehearing Conference: February 11, 2013 at 1:30 p.m.¹
Due Process Hearing: February 19, 2013 at 1:30 p.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.²

Student's request for mediation on January 21, 2013, is denied without prejudice. Because mediation is voluntary, both parties must agree to mediation before OAH will schedule mediation as part of a request for continuance. The parties may request mediation by notifying OAH in writing.

IT IS SO ORDERED.

Dated: December 31, 2012

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings

¹ The parties requested a PHC on February 12, 2013, but that date is a Tuesday, and OAH does not convene PHC's on Tuesday.

² The parties asked that the hearing begin on February 18, 2012, but that date has already passed, and February 18, 2013, is a state holiday.