

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2013090156

v.

FOLSOM CORDOVA UNIFIED SCHOOL
DISTRICT,

FOLSOM CORDOVA UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2013100621

v.

PARENT ON BEHALF OF STUDENT.

ORDER DENYING DISTRICT'S
REQUEST FOR CONTINUANCE,
SETTING PREHEARING CONFERENCE
AND CONFIRMING HEARING DATES

On October 31, 2013, District filed a request to continue the dates in this matter. Student did not respond to District's request. This hearing is scheduled to begin on November 19, 2013, and continuing day to day, as necessary at the sole discretion of the administrative law judge (ALJ).

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).)

District provided several reasons for the request for continuance: Diane Youtsey, Elementary Program Coordinator is unavailable on November 21 through 29, 2013, due to a pre-planned, out-of-state vacation. In addition, District is closed the week of Thanksgiving, beginning on November 25, 2013, and District claims other unidentified witnesses will not be available during this time period. District's attorney asserted she was not available for hearing the weeks of November 19, 2013, due to a hearing in another consolidated matter, Case Nos. 2013040098 and 2013090197; December 2, 2013, due to a hearing in two other cases, Case Nos. 2013080111 and 2013090535; and December 9, 2013, due to a hearing in Case No. 2013070638.

The day after District filed its request for a continuance, on November 1, 2013, at a prehearing conference, one of District's conflicts disappeared when the hearing in consolidated matter Case Nos. 2013040098 and 2013090197, was continued to December 16 to 20, 2013. District failed to amend its request for continuance or otherwise inform OAH that this conflict no longer existed.

The hearing date in this matter resulted from the parties' stipulated request to consolidate the two matters, which was filed on October 18, 2013, and granted on the same day. In the motion, the parties indicated they would try to agree to dates for the consolidated hearing, but they understood that if they were unable to do so, the hearing would be scheduled for its current dates, beginning on November 19, 2013, and continuing day to day at the sole discretion of the ALJ.

At the time the parties moved to consolidate these cases and acknowledged that the hearing may go forward as currently scheduled, District's attorney was aware of the dates set in the cases that she claims are now scheduling conflicts and provide good cause for a continuance. At a mediation on August 14, 2013, the hearing was set for the week of December 9, 2013, in Case No. 2013070638. At a prehearing conference on September 13, 2013, the hearing in Case No. 2013080111 was set for the week of December 2, 2013. In an October 10, 2013 scheduling order, the hearing in Case No. 2013090535 was set for the same week.

District has known of each of the purported scheduling conflicts upon which it relies since October 18, 2013, yet it failed to request a continuance until this time. It offered no explanation for its failure to request a continuance at an earlier date. Similarly, there is no explanation of when District's attorney became aware of the unavailability of Ms. Youtsey or the District's closure during the week of Thanksgiving.

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

Denied. The hearing dates are confirmed and shall proceed as calendared. The prehearing conference is rescheduled to Wednesday, November 13, 2013, at 3:00 p.m.

IT IS SO ORDERED.

Dated: November 6, 2013

/s/

JUDITH A. KOPEC
Division Presiding Administrative Law Judge
Office of Administrative Hearings