

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SALINAS UNION HIGH SCHOOL
DISTRICT.

OAH Case No. 2013100216

ORDER DENYING REQUEST FOR
CONTINUANCE OF PREHEARING
CONFERENCE AND DUE PROCESS
HEARING; ORDER SETTING
MEDIATION

On April 24, 2014, Student filed a request to continue this matter. On April 25, 2014, the Salinas Union High School District joined in the request to continue. This matter is currently set for a prehearing conference on May 2, 2014, and with hearing dates of May 12-14, 2014. The parties request a continuance for the prehearing conference until June 9, 2014, and the hearing in this matter to June 16-19, 2014. Student has requested the continuance because of difficulty with the interpreter at a mediation held in this matter on April 22, 2014 and has indicated that the parties would like the opportunity to hold another mediation in this case.

This matter has been pending since October 2013. The parties initially sought and were granted a continuance in October 2013 and were assigned hearing dates in February 2014. A mediation was scheduled and held in November 2013, where the parties asked for and were granted a continuance of hearing dates. New hearing dates, agreed to by the parties, of March 13-16, 2014 were scheduled. On February 26, 2014, the parties submitted a joint request for a continuance and asked that mediation be set for April 3, 2014, and hearing dates for May 12-15, 2014. The continuance was granted for the dates the parties requested. However, the continuance noted that the matter had been pending since October 2013 and that **no further continuances would be granted.**

Notwithstanding this directive regarding further continuances, Student sent a notice of cancellation of mediation on March 28, 2014, cancelling the mediation set for April 3, 2014, a date that was chosen by the parties, without asking that the mediation be rescheduled. Without explanation, the parties filed a joint request on April 3, 2014, asking that mediation be set for April 22, 2014. A mediation was set for April 22, 2014 and held on that date, where there were issues with the interpreter.

The parties now indicate that they would like to continue mediating in this case, but want the Office of Administrative Hearings to set another mediation date of May 20, 2014, and to move the hearing to the dates indicated above.

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:

The continuance request as to the prehearing conference and due process hearing is denied. The request for further mediation is granted. **A new mediation date is set for May 7, 2014.** However, all hearing dates and timelines shall proceed as calendared.

Here, the parties have requested a continuance of the prehearing conference and hearing dates to accommodate a requested mediation date of May 20, 2014. The parties participated in a mediation in this matter in November 2013. Student, after being informed on February 26, 2014, that no further continuances would be granted, cancelled the April 3, 2014 mediation, a date that had been proposed by the parties. The parties then asked that a mediation be scheduled on April 22, 2014, only a few weeks before the scheduled hearing dates.

Given the difficulties encountered with the interpreter at the April 22, 2014 mediation, the parties are assigned May 7, 2014, as an additional mediation date. No continuances of the prehearing conference and hearing dates is granted and no further continuances will be granted.

IT IS SO ORDERED.

DATE: April 25, 2014

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings