

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TAMALPAIS UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2013120166

ORDER DENYING REQUEST FOR
CONTINUANCE

On December 31, 2013, the Office of Administrative Hearings (OAH) granted the parties' joint request to continue this matter and set the hearing to begin on March 10, 2014, as requested by the parties. On February 28, 2014, OAH conducted a prehearing conference, wherein the dates of hearing were again confirmed with the parties. On March 5, 2014, the Tamalpais Union High School District (Tamalpais) filed a request to continue the hearing, seeking to vacate the first two days of hearing, on the grounds that its special education director (director) would be unavailable due to a conference in Denver, Colorado. On March 6, 2014, Student filed an opposition.

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:

☒ Denied. All hearing dates are confirmed and shall proceed as calendared. OAH set this matter in accordance with the dates requested by Tamalpais, in collaboration with Student, on December 30, 2014. It is assumed that Tamalpais' director knew of, and agreed with, the dates his counsel was requesting and nothing in the record contradicts that assumption. On January 24, 2014, Tamalpais made arrangements for his attendance at a conference in Colorado from March 9 through 11, 2014. Tamalpais' commitment of its director's time to the Colorado conference was made almost one month after OAH set this matter for hearing. The conflict was not discovered by the director until March 3, 2014, two months after OAH set this matter. Tamalpais claims that the director "must" attend the conference, without providing any information as to what the conference is and why he "must" attend. Conversely, Tamalpais' attorneys assert that the director "must" attend the due process hearing in this matter. Now, on the eve of hearing, it seeks a continuance of a matter it has known was pending for over two months, so that its director may satisfy both of his "must" attend commitments, a conflict that he himself created.

Student opposes on the grounds that she has rearranged her college academic schedule and her therapies so that she may be able to participate in her hearing. It appears that Student was diligent and properly calendared the hearing dates requested on her behalf and rearranged her academic schedule to participate in this hearing. Student contends that she will suffer, both with respect to her academics and with respect to her therapies, if she now has to rearrange her schedule on the eve of hearing in order to accommodate Tamalpais' director's schedule.

Tamalpais has failed to establish why its director's attendance at the conference is mandatory or required. It has failed to establish why another administrator cannot be present for the one and one-half days of hearing that Tamalpais' director will not be able to attend. Finally, it has failed to establish how it will be prejudiced if its director is unavailable for part of the hearing. Accordingly, Tamalpais has failed to establish good cause and the request is denied.

IT IS SO ORDERED.

DATE: March 7, 2014

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings