

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014030356

ORDER GRANTING REQUEST TO
SET MEDIATION, PARTIALLY
GRANTING REQUEST FOR
CONTINUANCE, AND VACATING
AND CONFIRMING HEARING
DATES

On April 23, 2014, the parties filed a series of emails and letters that are being construed as a joint request to set a mediation date of April 30, 2014, and to continue the hearing.¹ On April 17, 2014, Student made a request for continuance which was denied on April 18, 2014, because Student did not state any reason for requesting a continuance.

A prehearing conference was held in this matter on April 21, 2014, which set April 30, May 1, and May 6-8, 2014, as hearing dates in this matter. Two attorneys for Student, Betsy Brazy and LaJoyce Porter, appeared at the prehearing conference. Neither attorney for Student requested a continuance at the prehearing conference or indicated that a motion for continuance was contemplated.

The order after prehearing conference noted that no other pretrial motions were pending or contemplated and that any motion filed after April 21, 2014, shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not made prior to or during the prehearing conference of April 21, 2014.

The parties join in a request that April 30, 2014, be set as a date for mediation, because the parties wish to mediate before hearing and have not had an opportunity to do so. The Oakland Unified School District (Oakland) asks to vacate April 30, 2014 hearing date and use the date as a mediation date, vacate May 1, 2014 and proceed with the hearing on the currently scheduled dates of May 6-8, 2014.

Student asks that April 30, 2014, be assigned as a mediation date and that all of the hearing dates currently on calendar be vacated and that the hearing be continued based on the

¹ The request for continuance was a jumble of emails between counsel for the parties, a letter from the attorney for Oakland to OAH and a letter from Ms. Brazy to OAH. The motion contained no sworn declarations and was not in a format recognizable as a motion.

unavailability of an expert witness. However, Student's request is contradictory as to the date when he wants the hearing set. Ms. Brazy states in her letter that the expert witness has only one date in late May and one date in mid-June available for testimony. However, Ms. Brazy then asks that OAH assign any dates for hearing within the next 90 days, as Student and District cannot agree on continued dates. It is unclear the duration of the continuance being proposed by Ms. Brazy. Ms. Brazy supplied no declaration under penalty of perjury regarding the unavailability of the expert witness and establishing that the expert witness was available as of April 21, 2014, for the scheduled hearing dates but between the prehearing conference of April 21, 2014, and the date of her request to continue, April 23, 2014, the expert became unavoidably unavailable.

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:

Granted in part and denied in part. The request to vacate April 30, 2014, and May 1, 2014, as hearing dates is granted. Good cause exists as the parties have not yet had an opportunity to mediate and both parties express the desire to do so. However, good cause has not been established for any additional continuance or why the motion to continue was not made as of the date of the prehearing conference on April 21, 2014. No further continuances will be granted in this matter. The matter will be set as follows:

Mediation: April 30, 2014, at 9:30 a.m.

Due Process Hearing: May 6, 2014, at 9:30 a.m., and May 7-8, 2014, at 9:00 a.m. and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

IT IS SO ORDERED.

DATE: April 24, 2014

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings