

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014080281

ORDER GRANTING REQUEST FOR
CONTINUANCE OF HEARING
DATES

This matter is presently scheduled to be heard on September 30, 2014, and October 1, 2, 7 and 8, 2014, continuing day-to-day thereafter at the discretion of the administrative law judge. On September 24, 2014, Student filed a request to vacate the hearing dates of October 1 and 2, 2014, and continue them to later dates, on grounds that Student's counsel, Tania Whiteleather, Esq., has another matter, OAH case number 2014040069, that has been set for hearing on October 1 and 2, 2014. On September 26, 2014, Long Beach Unified School District filed an opposition to Student's request on grounds that Student failed to show good cause for Student's failure to raise the conflict in hearing dates at the September 22, 2014 prehearing conference in this matter, and on grounds that Student failed to explain why co-counsel Lisa Malstem, Esq. could not represent Student on October 1 and 2, 2014.

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. Official notice is taken that OAH set the October 1 and 2, 2014 hearing dates

in matter 2014040069 on September 23, 2014, after the PHC in this matter, and that good cause existed to specify those dates. Although Student did not submit a declaration explaining why co-counsel Ms. Malstem could not present Student's case on October 1 and 2, 2014, the ALJ finds good cause exists to exercise discretion to reschedule those two hearing dates at the end of the hearing to permit Student's hearing counsel for the PHC, Ms. Whiteleather, to attend all days of the hearing.

Granted. The hearing dates of October 1 and 2, 2014 are vacated. The hearing shall take place on September 30, 2014, from 9:30 a.m. to 5:00 p.m., and continuing on October 7, 8, 9 and 13, 2014, from 9:00 a.m. to 5:00 p.m. On October 7, 2014, before the first witness for that day testifies, the parties shall provide the ALJ with one detailed hour-by-hour schedule of all witnesses expected to testify at the remaining hearing days, which list shall also include an estimate of time for each party's direct and cross-examination.

IT IS SO ORDERED.

DATE: September 29, 2014

/s/

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings