

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. 2015030906

ORDER PARTIALLY GRANTING
REQUEST FOR CONTINUANCE AND
SETTING PREHEARING
CONFERENCE AND HEARING
DATES

On August 4, 2015, the undersigned Presiding Administrative Law Judge denied the parties second joint request for a continuance until October 20, 2015. The order denying the request for continuance noted that the Office of Administrative Hearings was inclined to grant a continuance to allow Student's newly retained attorney time to prepare for hearing, but that a continuance until October 20, 2015 was too long.

The parties were ordered to meet and confer as to a new date, were ordered to submit sworn declarations for any upcoming unavailability and were also informed that this matter will be calendared prior to any matters which were filed later than this matter. On August 4, 2015, Student submitted another request to continue this matter. Oakland Unified School District filed a non-opposition to the request for continuance on August 5, 2015, and did not file a declaration with any unavailability for an upcoming hearing date.

There was no indication that the parties met and conferred regarding proposed hearing dates. Student again asks that the matter be set to begin on October 20, 2015 and then provides a list of cases and hearings in which his attorney is set to appear, which he claims constitute good cause for a continuance until October 20, 2015. Student provided the following list:

<u>OAH Case No.</u>	<u>Hearing Dates</u>
2015061203	August 18, 19 and 20, 2015
2015050567	August 18, 19, 20, and 2, 2015
2015030589	August 25, 26, and 27, 2015
2015070807	August 25, 2015
2015040188	September 14, 15, 16, 17 and 21, 2015
2015060502	September 22, 23, 24, and 25, 2015
2015060533	September 28, 29, and 30, 2015
2015060177	October 6, 7, and 8, 2015

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:

Partially Granted. All dates are vacated. Student did not establish good cause for a continuance until October 20, 2015. With the exception of one case, all of the cases that Student cites as a foundation for the unavailability of counsel claim were filed after the instant case. The previous order explicitly stated that this matter would proceed before cases filed after this case. This case was filed on March 19, 2015. Therefore, good cause does not exist to continue this case because of any case filed later than this case. More importantly, the cases Student lists as the basis for unavailability of counsel, even if they were to be considered good cause, only constitute good cause for the actual dates of hearing. There are many available dates prior to October 20, 2015 on which Student's counsel is available. It is the responsibility of Student's counsel to manage her caseload such that she has sufficient time to prepare for all the cases she accepts. Further, Student's attorney accepted this case after the dates were established in all of the cases he lists.

Finally, good cause does exist for a short continuance because of Student's recent retention of counsel. This continuance will be until after the dates for the one case which was filed prior to this case, which is scheduled for hearing on August 25, 26, and 27, 2015. Both parties were ordered to provide any dates of unavailability. Student provided the list as outlined above and Oakland did not provide any unavailable dates. Therefore, the matter will be set as follows and **no further requests for continuances will be granted without exceptional good cause and a showing that the unavailability arose after the date of this order:**

Prehearing Conference: August 28, 2015, at 10:00 a.m.
Due Process Hearing: September 8, 2015, at 1:30 p.m., September 9,
2015, at 9:00 a.m., September 10, 2015, 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: August 5, 2015

/s/

MARGARET BROUSSARD
Presiding Administrative Law Judge
Office of Administrative Hearings