

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FREMONT UNION HIGH SCHOOL  
DISTRICT.

OAH Case No. 2016020750

ORDER GRANTING REQUEST FOR  
CONTINUANCE AND SETTING  
MEDIATION, PREHEARING  
CONFERENCE AND HEARING  
DATES

On March 16, 2016, Student filed a request to change mediation dates from March 17, 2016 to March 31, 2016. This request was denied, as March 31, 2016 is a state holiday. Student also requested to continue the hearing dates in this matter to May 3, 2016, May 4, 2016 and May 5, 2016. Student stated on the request that Fremont Union High School District joined in the request to continue the hearing dates, but attached no such agreement from Fremont. The request did not contain a declaration under penalty of perjury from Student's counsel regarding any agreement from Fremont.

On March 22, 2016, Fremont filed a request to set a mediation date of April 21, 2016 and represented that the parties had agreed on this date. The request also asks that a particular pro-tem mediator be assigned to the rescheduled mediation. There was no request from Fremont to move the hearing dates. However, the request asks for a mediation date which is later than the current hearing dates. Therefore, the parties request for a mediation to be scheduled on April 21, 2016 is construed as a request to continue the hearing in this matter to allow the parties to participate in mediation. Again, no such agreement from Student was attached to the request and no declaration under penalty of perjury regarding any such agreement was contained in the request.

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. All dates are vacated. **IN THE FUTURE, WHEN THE PARTIES CLAIM THAT A REQUEST IS MUTUALLY AGREED UPON, THE PARTIES ARE ORDERED TO PROVIDE EVIDENCE OF THE OTHER SIDES AGREEMENT. The request for a specific mediator is denied. OAH will assign a mediator based upon operational needs.** This matter will be set as follows:

Mediation:	April 21, 2016, at 9:30 a.m.
Prehearing Conference:	June 10, 2016, at 3:00 p.m.
Due Process Hearing:	June 21, 2016, at 9:30 a.m., June 22, 2016, at 9:00 a.m., and June 23, 2016, at 9:00 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing “good cause” to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

IT IS SO ORDERED.

DATE: March 23, 2016

DocuSigned by:

*Margaret Broussard*

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MARGARET BROUSSARD  
Presiding Administrative Law Judge  
Office of Administrative Hearings