

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VACAVILLE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012030812

ORDER DENYING REQUEST FOR
CONTINUANCE

On May 7, 2012, a prehearing conference (PHC) was held in this matter before Administrative Law Judge (ALJ) Adeniyi Ayoade. At the PHC, the Vacaville Unified School District (District) moved to vacate the due process hearing date of May 16, 2012, on the grounds that counsel for District is a newly appointed member of the Statewide Pupil Assessment Review Panel (SPARP), which holds its first meeting on May 16, 2012; and, that the Director for Special Education for District (Director) is scheduled for her retirement party which begins in the late afternoon of May 16, 2012. Student opposed District's request as untimely and asserted that granting the request will require the hearing to be delayed beyond June 22, 2012, as Student's counsel has conflicting depositions and trial in another matter beginning May 21, 2012. ALJ Ayoade deferred ruling on the motion and instructed District to file a written motion. On May 9, 2012, District filed its motion, and on May 11, 2012, Student filed his 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).) The Office of Administrative Hearings (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 prehearing conference and hearing dates are confirmed and shall proceed as calendared. According to District's counsel's declaration, she was appointed to the SPARP in January 2012. The dates for its meetings are set by the California Department of Education (CDE). This matter was set for hearing on March 23, 2012. Student's counsel correctly points out that District has failed to provide information on when District's counsel knew of her May 16, 2012 SPARP meeting. Similarly, District fails to state when it knew of the retirement party for its Director. District further fails to provide any information on whether it attempted to meet and confer with Student's counsel prior to the May 7, 2012, PHC or why it did not identify its conflicts in the PHC statement it filed on May 2, 2012. These factual omissions raise concerns for OAH that the motion, made verbally at the PHC and with no prior notice to Student, was in fact untimely.

OAH is sympathetic to District's counsel's conflict and to the Director's attendance of her retirement party.¹ However, District's failure to timely disclose the conflicts and to meet and confer with Student's counsel are factors considered in determining good cause. District's motion to vacate May 16, 2012, is denied. The parties are ordered to discuss at the May 15, 2012 hearing whether May 18, 2012, should be added as a hearing date.

IT IS SO ORDERED.

Dated: May 14, 2012

/s/

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

¹ Nothing in this order precludes the Director from leaving the hearing with sufficient time to attend her retirement party, and assigning another administrative designee to replace her at the hearing.