

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FAIRFIELD SUISUN UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012030917

ORDER DENYING REQUEST FOR  
CONTINUANCE

On March 20, 2012, LaJoyce L. Porter, attorney for Student, filed an expedited and non-expedited Request for Due Process Hearing against the Fairfield Suisun Unified School District (District). On March 26, 2012, the Office of Administrative Hearings (OAH) issued a Scheduling Order, Notice of Dual Hearing Dates Including Expedited Hearing, Prehearing and Mediation (Scheduling Order). The parties and their respective counsel participated in an expedited due process hearing in this matter on April 25 – 27, 2012.

On May 2, 2012, Ms. Porter, on behalf of Student, filed with OAH a request to vacate the non-expedited Prehearing Conference (PHC) date of May 7, 2012, because Ms. Porter is scheduled for mediation in Alameda Superior Court. Student also requested that OAH vacate the non-expedited hearing date of May 15, 2012, and set a trial setting conference for that date because Ms. Porter and Attorney Jan E. Tomsy, on behalf of the District, have not been able to reach agreeable continued hearing dates. On May 2, 2012, Ms. Tomsy, on behalf of the District, filed a request for a continuance of the non-expedited hearing date, and requested hearing dates in late-August 2012, when District personnel would be available to testify. On May 2, 2012, Student submitted an opposition to the District's continuance request because the requested hearing dates prejudice Student who has been out of school since November 2011.

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:

Denied without prejudice. All hearing dates and timelines shall proceed as calendared. Here, the parties have requested a continuance of the hearing dates, and OAH is inclined to grant the continuance. Student's request for a trial setting conference is denied as these are set only in unusual cases. Student did not establish good cause for a continuance of the PHC because Ms. Porter did not submit proof of the Superior Court mediation, when it was set and why this conflict was not brought sooner to the attention of OAH, as this matter has been set for hearing since March 26, 2012. Additionally, neither Ms. Porter nor Ms. Tomsy established unavailability for hearing on May 15, 2012. Finally, the fact that the last school day for the District is in early-June 2012, does not make District personnel unavailable to testify as they are subject to being subpoenaed to compel their testimony. The parties may re-submit the request to continue after they have agreed upon hearing dates or discuss mutually agreeable dates at the May 7, 2012 PHC. If the parties are unable to agree on hearing dates, they may request OAH to select dates.

IT IS SO ORDERED.

Dated: May 3, 2012

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings