

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN MATEO COUNTY OFFICE OF  
EDUCATION AND SAN MATEO UNION  
HIGH SCHOOL DISTRICT.

OAH CASE NO. 2013061131

ORDER DENYING REQUEST FOR  
CONTINUANCE

On July 31, 2013, the parties filed a request to modify, through a second request for continuance, a July 30, 2013 order by the Office of Administrative Hearings (OAH), which had granted a July 30, 2013 request for continuance by the parties. As discussed below the parties' request is denied.

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. All mediation, prehearing conference (PHC) and hearing dates are confirmed and shall proceed as calendared. With respect to the requested mediation date, a review of the parties' filings establishes that counsel for Student is unaware of OAH's

calendaring guidelines. In the request of July 31, 2013, counsel appears surprised that OAH did not grant the parties' requested mediation date of August 23, 2013, and instead set mediation for August 22, 2013. Simply because the parties agree to a particular date, it does not mean that OAH will grant the request if the request falls outside OAH's calendaring guidelines. OAH does not set mediations on Mondays or Fridays, which is what August 23, 2013 is. In the latest request, the parties request mediation on August 19, 2013, which is a Monday. Accordingly, the request to move mediation from August 22, 2013, to August 19, 2013, is denied. Furthermore, counsel is encouraged to review OAH's calendaring guideline, available at OAH's website.

In the parties' July 30, 2013 request for continuance, the parties asked that OAH set the hearing date. Accordingly, the undersigned set the PHC to convene on November 8, 2013, and the due process hearing to convene on November 19, 2013. In the facsimile cover sheet to the July 31, 2013 request, counsel for Student takes umbrage with the dates OAH set, writing, "Also, WHY was the PHC and hearing not scheduled until NOVEMBER??? Way too long...please set tentative hearing dates in late September or early October. . . ." [Grammatical errors in original.] OAH entertains requests and motions from parties; it does not take directives from parties. OAH does not set tentative dates. The parties asked OAH to assign dates, and OAH has assigned the dates, in order to accommodate the parties' request for a continuance. Notwithstanding the facsimile cover sheet, the body of the July 31, 2013 request again asks OAH to assign the PHC and due process hearing dates. As OAH has already assigned those dates in the July 30, 2013 order, any further request to assign new dates is denied.

IT IS SO ORDERED.

Dated: August 5, 2013

/s/

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