

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2012090554

v.

FREMONT UNIFIED SCHOOL DISTRICT,

FREMONT UNIFIED SCHOOL DISTRICT,

OAH CASE NO. 2012120305

v.

PARENT ON BEHALF OF STUDENT.

ORDER DENYING REQUEST FOR
CONTINUANCE

On January 17, 2013, the parties filed a joint request to continue the dates in this matter. On January 14, 2013, the parties participated in a prehearing conference (PHC) and the due process hearing is set to begin on January 22, 2013.

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 hearing dates are confirmed and shall proceed as calendared. The parties mistakenly contend that this is the first request for a continuance. Student's matter was filed in September 2012 and continued on at least one occasion. While Fremont Unified School District may have filed its own matter in December 2012, and the matters were subsequently consolidated, this does not support the assertion that this is an initial continuance request. The parties have failed to provide any explanation as to why a second continuance is required. Furthermore, the January 15, 2013 order following prehearing conference specifically stated that any motion filed after January 14, 2013, needed to be accompanied by a sworn declaration as to why the motion was not made prior to the PHC or during the PHC. The parties' motion to continue fails to comply with OAH's January 15, 2013 order.

IT IS SO ORDERED.

Dated: January 17, 2013

/s/

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