

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2012090744

v.

VICTOR VALLEY UNION HIGH SCHOOL
DISTRICT,

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2012070653

V.

VICTOR VALLEY UNION HIGH SCHOOL
DISTRICT,

ORDER FOLLOWING PRE-HEARING
CONFERENCE GRANTING REQUEST
FOR CONTINUANCE AND SETTING
PHC/HRG

On February 13, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Deborah Myers-Cregar, Office of Administrative Hearings (OAH). Jack Clark, Attorney at Law, appeared on behalf of Victory Valley Union High School District (District). Parent appeared on behalf of Student. The PHC was recorded.

At the Pre-hearing Conference, the parties jointly requested a brief continuance of the hearing as they were not prepared to go forward. Parent had not exchanged her exhibits, and had some difficulty narrowing her issues at hearing. Parent stated she was interested in mediation to settle the case. Parent had cancelled the prior mediation, but had not rescheduled it. District was willing to discuss mediation dates with her. The parties agreed to new pre-hearing conference and hearing dates.

Based on discussion of the parties, the ALJ issues the following order:

1. 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 parties mutually requested a continuance because they were not prepared, parent had not exchanged her evidence, and the parties were interested in rescheduling a prior mediation that had been cancelled.

The request is granted. All dates are vacated. This matter will be set as follows:

Mediation:	Parties shall contact OAH with mutually agreed dates.
Prehearing Conference:	March 6, 2013, at 1:30 PM
Due Process Hearing:	March 18, 19, 20, 21, and March 25, 26, 27, 28, continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. The hearing will start at 1:30 on March 18 and 25, and at 9:30 all other days, unless ordered by the ALJ.

[NOTE: Although the parties discussed additional hearing dates in April at the PHC, OAH will not set hearing dates for an ongoing hearing two weeks apart. At all times the parties were on notice that OAH expects hearings to be held day-to-day, Monday through Thursday, until completed.]

2. 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.

3. The parties are encouraged to meet and confer to stipulate to and clarify the issues in the case.

4. The parties are encouraged to review and shorten their witness lists prior to the hearing, bearing in mind that evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear.

5. There shall be no further continuances.

IT IS SO ORDERED.

Dated: February 13, 2013

/s/

DEBORAH MYERS-CREGAR
Administrative Law Judge
Office of Administrative Hearings