

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PLACER HILLS UNION SCHOOL
DISTRICT.

OAH CASE NO. 2013060210

ORDER GRANTING IN PART AND
DENYING IN PART REQUEST FOR
CONTINUANCE AND SETTING
PREHEARING CONFERENCE AND
HEARING

On September 3, 2013, Student, through his advocate, Robert Closson, Ed.D., filed a request (sometimes referred to as a “motion”) to continue the dates for a prehearing conference (PHC) and hearing in this matter. No reason was given for the request, and Student indicated that this was the initial request for a continuance in this matter, although a joint request for continuance was previously filed by the parties and granted by the undersigned ALJ in July 2013.¹

In preparing the request for continuance, Student used page two of a form which is to be used when the parties are jointly requesting a continuance. The form is only signed by Student’s advocate. In addition, contrary to the OAH directions on page one of the form, which was not included with Student’s request, Student did not indicate that the parties conferred about the request for continuance, nor did Student explain his reason for the request. Further, the date on which Student filed this request for a continuance was after the date of the August 30, 2013 PHC, that OAH had ordered on July 9, 2013. That order scheduled the PHC for 10:00 a.m. on August 30, 2013, and Student’s advocate failed to appear for the PHC.² Student now asks that the PHC be set for September 16, 2013, at 10:00 a.m., and the hearing to begin on September 23, 2013, and continue through September 27, 2013. The District filed a response stating that it did not object to the continuance, but asking that OAH set the hearing to commence on September 30, 2013, because the District is not available on the dates requested by Student.

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

¹ Where applicable, use of the word “Student” includes his advocate.

² OAH has set an order to cause hearing in a separate order to address the failure of Dr. Closson to appear at the August 30, 2013 PHC.

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:

☒ Granted in part and denied in part, in that the matter will be continued, but not to the dates requested by Student. A continuance shall be granted as to the PHC with further PHC proceedings to immediately follow the order to show cause hearing concerning Dr. Closson's failure to appear at the PHC set for August 30, 2013. The hearing is continued to the dates requested by the District in response to Student's request for continuance.³

Prehearing Conference:	September 9, 2013, immediately following the order to show cause hearing set for that date at 3:00 p.m.
Due Process Hearing:	September 30, 2013 at 1:30 p.m., through October 3, 2013, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

No further continuances will be granted without a showing of extraordinary good cause, and supported by declaration.

IT IS SO ORDERED.

Dated: September 5, 2013

/s/
REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings

¹These dates were previously ordered in the order to show cause, and are reaffirmed here.