

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013070873

ORDER GRANTING REQUEST FOR
CONTINUANCE AND SETTING NEW
HEARING DATES

On November 25, 2013, the parties appeared for hearing as previously set. Jane DuBovy, attorney at law, appeared on Student's behalf. Carlos Gonzalez and Brianna Hill, attorneys at law, appeared on District's behalf. Michael Jason, District's Executive Director of Special Education attended the hearing on District's behalf. The hearing did not commence.

Prior to hearing, on Friday, November 22, 2013, Student's attorney had represented to OAH that a continuance to December 23, 2013 was required because District's attorney had not met and conferred regarding witness scheduling. Then, on the morning of hearing, the parties jointly filed a stipulated continuance request seeking an additional 11 weeks to negotiate a settlement that was unsupported by any specific facts. Both the November 22, 2013 request and the November 25, 2013 joint request for continuance were denied by the Presiding ALJ for lack of good cause.

Prior to the hearing, the parties argued that other facts, not previously presented to OAH, justified a continuance. Because the attorneys for both sides had previously filed requests for continuance that were made on different grounds, the attorneys for both sides were required to testify under oath as to the facts supporting their new grounds for a continuance. Both attorneys, Ms. DuBovy and Mr. Gonzalez, testified under oath that the parties are in settlement negotiations regarding proper placement for Student; that on November 18, 2013, District had sought out a non-public school enrollment for Student as part of a settlement; and that a decision from the non-public school was expected by December 16, 2013. Ms. DuBovy and Mr. Gonzalez also represented that in the event the case does not settle, they will be ready to commence hearing on December 23, 2013 and despite District's winter break, District will make witnesses available for hearing.

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 reviewed the request for good cause and after considering all relevant facts and circumstances granted the parties' joint request for a continuance of the hearing dates. Ms. Dubovy and Mr. Gonzalez's testimony under oath regarding the actual settlement circumstances, representation from both that they will be ready to proceed with hearing on December 23, 2013 if settlement does not occur, and acknowledgement from both of their understanding that no further continuance will be granted based on the unavailability of witnesses or settlement discussions all support good cause for a second continuance in this case at this late stage. All dates are vacated. This matter will be set as follows:

Due Process Hearing:	December 23, 2013 at 1:30 PM; December 24, 2013 at 9:00 AM; December 26, 2013 at 10:00 AM; December 30, 2013 at 1:30 PM; December 31, 2013 at 9:00 AM; January 2, 2014 at 10:00 AM; and January 6, 2014 at 1:30 PM, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.
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The hearing will take place at District's offices located at 351 South Hudson Avenue, Pasadena, CA 91109.

IT IS SO ORDERED.

Dated: November 25, 2013

/s/

SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings