

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT,

OAH Case No. 2014090303

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2014090694

ORDER GRANTING REQUEST FOR
CONTINUANCE, SETTING
PREHEARING CONFERENCE AND
DUE PROCESS HEARING, AND
DENYING REQUEST TO SET SPECIFIC
DATES

On November 12, 2014, Student filed a request to continue the dates in this matter, which the San Francisco Unified School District opposed. On November 13, 2014, the Office of Administrative Hearings denied the request without prejudice. On November 14, 2014, Student renewed the request for continuance, which San Francisco again opposes. On November 12, 2014, San Francisco filed a separate request to set specific dates for an expert witness that is unavailable on the currently set dates for this matter. This order addresses both motions.

APPLICABLE LAW

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).)

DISCUSSION

Student's Request

In his renewed request for continuance Student raises grounds additional to the previous ground that his counsel was unavailable. As to the grounds of unavailability of counsel, it is clear that Student's counsel set dates for her vacation after the dates in this matter were set by OAH. Therefore, that does not constitute good cause for a continuance.

However, Student also asserts that Parent is unavailable to attend hearing due to San Francisco's holiday break, which necessitates that Parent attend to Student and therefore, Parent is unavailable. Student asserts this unavailability for November 25, 2014, which Student mistakenly identifies as a Wednesday. San Francisco opposes, asserting that November 25, 2014, is a Tuesday and school is in session. However, San Francisco admits that it is closed on Wednesday, November 26, 2014. A reading of the complaint and other documents in this matter show that this is not a hearing that will conclude in one day. OAH's practice is to have hearings continue day to day until finished, Monday through Thursday, unless otherwise ordered.¹ Therefore, this hearing would proceed into November 26, 2014, when Parent is unavailable to attend. Accordingly, Student's request to continue is granted.

San Francisco's Request

San Francisco asserts that it has a witness who is unavailable to testify until December 1, 2014. However, as noted herein this hearing is likely to be at least two days and OAH does not hold hearings on the first Monday of the month, which in this case would be December 1, 2014. Therefore, if Student's request to continue was denied, the hearing would recommence on December 2, 2014. San Francisco asserts its witness, while available on December 1, 2014, is not available on December 2, 2014. Therefore, San Francisco is in effect asking for a continuance of its own, though disguised as a request to set specific dates. It is disingenuous of a party to adamantly oppose a request for continuance, while asking to modify the calendar for its own purposes, born out of the unavailability of a party or witness in its camp.²

¹ Except for the first Monday of every month, when OAH does not calendar any hearings.

As Student's, request to continue is granted, San Francisco's request to set specific dates is moot and is denied.

ORDER

1. Student's request for continuance is granted. All dates are vacated. This matter will be set as follows:

Prehearing Conference:	February 13, 2015, at 1:00 PM
Due Process Hearing:	February 24 – 26, 2015, starting at 9:30 AM, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

2. San Francisco's request to set specific dates is denied.

DATE: November 17, 2014

/s/

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

² As was noted in OAH's November 13, 2014 order, the parties' respective counsels in this matter appear unable to work collaboratively together on matters such as calendaring. The parties are once again encouraged to work together on procedural issues such as calendaring.