

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2014080454
v.	
OAKLAND UNIFIED SCHOOL DISTRICT,	
OAKLAND UNIFIED SCHOOL DISTRICT,	OAH Case No. 2014050059
v.	
PARENT ON BEHALF OF STUDENT.	ORDER DENYING REQUEST FOR CONTINUANCE

On November 14, 2014, the parties filed a joint request to continue the dates in this matter on the ground that Student's counsel has a pre-planned vacation during the currently set dates for hearing. This is the second continuance request for the consolidated matter.

On November 17, 2014, the parties filed a renewed request for continuance, providing additional information. While it is newly signed by Student's counsel, the request appears to have the stale November 13, 2014 signature of Oakland Unified School District's counsel, which appears on the November 14, 2014 request. It is unclear if Oakland joins in the renewed request. Regardless, it will be treated as a joint request.

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 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 prehearing conference and hearing dates are confirmed and shall proceed as calendared. The Oakland Unified School District filed a request for hearing against Student on April 29, 2014. A continuance was granted in Oakland's case on May 19, 2014. On August 13, 2014, nearly three and one-half month later, Student filed his own hearing request against Oakland. The cases were consolidated and on September 26, 2014, OAH granted a continuance of the consolidated matter, setting the current hearing dates. The parties now move for a third continuance on the ground that Student's counsel is on vacation during the currently set hearing dates.

Additionally, the November 17, 2014 request contends that OAH unilaterally set the hearing dates and that Student's counsel's vacation plans were made prior to OAH setting the current dates. It is true that OAH set the dates based upon OAH's calendar, when the parties requested a continuance in September 2014. However, Student has provided no evidence to establish the contention that his counsel's Colorado vacation from December 16 through 20, 2014, was set prior to OAH's September 26, 2014 order setting the current dates. Student provides neither a sworn declaration from his counsel, nor documentary evidence establishing the vacation was set prior to September 26, 2014. Accordingly, the parties have failed to establish good cause and the request is denied.

IT IS SO ORDERED.

DATE: November 17, 2014

/s/

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