

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

CARPINTERIA UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014120256

ORDER GRANTING/DENYING
REQUEST FOR CONTINUANCE AND
SETTING PREHEARING
CONFERENCE AND DUE PROCESS
HEARING DATES

On December 30, 2014, Carpinteria Unified School District filed with the Office of Administrative Hearings a Motion to Continue the Due Process Hearing in this matter based upon Carpinteria's counsel being unavailable. On December 31, 2014, Parents on behalf of Student filed with OAH an opposition to Carpinteria's motion.

OAH issued a scheduling order on December 8, 2014 scheduling Mediation for December 30, 2014; Prehearing Conference for January 12, 2015; and the Due Process Hearing for December 20, 2015. There has been no previous request for continuance.

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 filed his complaint with OAH on November 25, 2014. Student contends that he has been denied a free appropriate public education because Carpinteria denied him eligibility for special education. Student avers that an independent evaluation obtained by Student demonstrated that he was, and continues, to be eligible for special education under the categories of specific learning disability and emotional disturbance.

In its motion for continuance, Carpinteria requests that the due process hearing be continued to a date where its counsel does not have a conflict. Carpinteria contends that its counsel, Melissa Hatch, is unavailable from January 20-26, 2015, due to her being scheduled for a surgical procedure on January 20, 2015. The motion is supported by a declaration from Ms. Hatch which states that the surgical procedure was scheduled by her doctor on December 22, 2014. She also declared that her doctor has prescribed her to “rest and recover” until January 26, 2015 when she would be cleared to return to work. In her declaration, Ms. Hatch states that she is scheduled for due process hearings with OAH on February 10, 2015; February 17-24, 2015; February 24-26, 2015; March 9-15, 2015; and March 30-April 2, 2015.

Student opposes the motion for continuance on grounds that Carpinteria failed to give details of the procedure and the need for recuperation until January 26, 2015. More importantly, Student also points out that Student is currently not attending school because of anxiety and requires resolution so as to be able to attend an appropriate educational setting. Student points out that should the due process hearing be continued to a date in April, a decision in the matter would not be rendered to almost the end of the current school year.

Carpinteria has cited good cause to continue the due process hearing because of unavailability of counsel. Here it is essential for the due process hearing to proceed as soon as possible since Student is not attending school. Accordingly, the due process hearing will be continued until February 10 through 12, 2015.¹

Carpinteria’s motion contains good cause.

ORDER

Carpinteria’s motion for continuance is GRANTED. All dates are vacated. New dates are:

Prehearing Conference:	February 2, 2015 at 3:00 PM
Due Process Hearing:	February 10-12, 2015 at 9:30 AM, and continuing

¹ Ms. Hatch listed this date as unavailable. In reviewing that matter, the hearing date was the initial date.

day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. This matter is assigned to Administrative Law Judge Laurie Gorsline.

IT IS SO ORDERED.

DATE: January 2, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings