

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN MATEO-FOSTER CITY SCHOOL
DISTRICT.

OAH Case No. 2014100748

ORDER GRANTING REQUESTS FOR
CONTINUANCE AND TO AMEND
COMPLAINT AND SETTING
PREHEARING CONFERENCE AND
DUE PROCESS HEARING DATES

Parents filed this matter in October 15, 2014, through Advocate Linda Hughes. On November 14, 2014, at the joint request of the parties, the matter was continued for mediation on December 2, 2014, prehearing conference (PHC) on February 23, 2015, and due process hearing on March 3-5, 2015. The mediation on December 2, 2014, was unsuccessful.

On February 18, 2015, Parents requested a continuance of the PHC and hearing because they wanted time to seek representation by an attorney. San Mateo-Foster City opposed the request on the ground that Parents' diligence in seeking counsel had not been demonstrated, and on February 20, 2015, the undersigned ALJ denied the request without prejudice to its renewal on a showing of diligent effort to seek counsel.

On February 23, 2015, Advocate Hughes filed a withdrawal from representation, and attorney Susan Foley filed a "special appearance" on behalf of Student and Parents, stating that she would represent them if the PHC and hearing were continued but could not do so on the current schedule. Ms. Foley also stated that, if she represented Student and Parents, she intended to amend the due process hearing request (complaint) to allege violations relating to a more recent individualized education program offer made on February 10, 2015, and not addressed in the original complaint. San Mateo-Foster City has informed OAH that it has no objection to the requested continuance and amendment.

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 has reviewed the requests for continuance and amendment for good cause, and considered all relevant facts and circumstances. The requests are granted as set forth in the Order below.

ORDER

1. Student's request to continue the dates in this matter is granted. All dates are vacated. This matter will be set as follows:

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

2. Student's motion to amend her complaint is granted. Student shall have 14 days, to and including March 9, 2015, to file the amended complaint. If the amended complaint is timely filed, OAH will issue a new scheduling order. If the amended complaint is not timely filed, the matter will proceed on the dates set forth in part 1 of this Order based on the original complaint.
3. Ms. Foley shall promptly file an unconditional Notice of Representation.
4. The parties are encouraged to consider requesting another mediation.

DATE: February 23, 2015

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings