

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WEST CONTRA COSTA UNIFIED
SCHOOL DISTRICT AND OAKLAND
UNIFIED SCHOOL DISTRICT.

OAH Case No. 2014050135

ORDER GRANTING IN PART AND
DENYING IN PART REQUEST FOR
CONTINUANCE

On March 4, 2015, the parties jointly filed a request to continue the dates in this matter, currently scheduled to begin on April 9, 2015. On February 13, 2015, the Office of Administrative Hearings issued an order in this case which stated, in relevant part, that “[H]owever, given the length of time this matter has been pending, there will be no additional amendments or continuances in this matter.”

Student has requested that this matter be continued because his counsel has another hearing in front of OAH scheduled to begin on April 7, 2015, which will not conclude until April 16, 2015. Student did not provide a declaration under penalty of perjury to support his claims¹.

West Contra Costa Unified School District has requested the matter be continued because April 6-10, 2015, is spring break and there will be limited access to witnesses and facilities; its counsel has preplanned vacation obligations at the “start” of the week of April 13-17, 2015; and its counsel is scheduled to host a live feed of a legal symposium on April 16, 2015, which cannot be reassigned or rescheduled. West Contra Costa’s request is supported by a declaration under penalty of perjury.

¹ The case Student’s counsel has claimed will take six days is currently only scheduled for April 7, 2015, and was filed on November 19, 2014. This matter was originally filed on April 28, 2014. This matter takes precedence and when the prehearing conference is held for the other case, that hearing should be scheduled with deference to this hearing.

Oakland Unified School District has requested that the matter be continued because April 6-10, 2015, is spring break and there will be limited access to witnesses and facilities²; its counsel is scheduled to be in hearing in another matter from April 2-8, 2015³, and counsel's recent medical leave renders her incapable of representing clients in back-to-back hearings; and its counsel is also scheduled to host a live feed of a legal symposium on April 16, 2015, which cannot be reassigned or rescheduled. Oakland's request is supported by a declaration under penalty of perjury.

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. Although the last order from OAH did not contemplate any further continuances, the order was made prior to the scheduling of the new dates in this matter and the parties were unaware of the actual dates the matter would be scheduled. For that reason only, the joint request to continue will be considered.

² Embedded in the declaration from Ms. Silverman, counsel for Oakland, is a recommendation that the hearing take place at OAH offices in Oakland, California. If the parties wish this change to be considered, a separate motion should be filed to change the location of the hearing, or the issue should be raised at the PHC.

³ The conflicting matter which Oakland's counsel claims is scheduled for April 2-8, 2015, is only scheduled for hearing on April 1 and 2, 2015 and was filed on October 27, 2014. This matter was originally filed on April 28, 2014. This matter takes precedence and when the PHC is held for the other case, that hearing should be scheduled with deference to this hearing.

Student did not show good cause to continue the hearing. The conflicting hearing cited by his counsel is for a later filed case and is only currently scheduled for April 7, 2015. This case has been pending since April 2014 and has precedence in scheduling. Further, Student's request was not accompanied by a declaration under penalty of perjury.

West Contra Costa did not show good cause to continue the hearing. Counsel's vague statement that she has "preplanned vacation obligations at the start of the week" is not specific enough and there is no indication when these "obligations" arose and what days she would be unavailable. West Contra Costa's school break also does not constitute good cause for a continuance. However, counsel's longstanding obligation to host a symposium on April 16, 2015, does constitute good cause for not holding the hearing on April 16, 2015.

Oakland did not show good cause to continue the hearing due to Oakland's school break. Oakland's counsel's request for a week in between her scheduled hearings due to her recent return from medical leave may constitute good cause for a continuance, however, the conflicting hearing is scheduled to end a week before this matter is scheduled to start, so no good cause exists at this time. Finally, counsel's longstanding obligation to host a symposium on April 16, 2015, does constitute good cause for not holding the hearing on April 16, 2015.

☒ Granted in part and denied in part. This matter will be set as follows:

Prehearing Conference:	March 30, 2015, 15 1:00 p.m.
Due Process Hearing:	April 9, 2015, at 9:30 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge, with the exception of April 16, 2015, on which date no hearing will be held.

IT IS SO ORDERED.

DATE: March 10, 2015

/s/
MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings