

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MILL VALLEY ELEMENTARY SCHOOL
DISTRICT.

OAH Case No. 2014110046

ORDER GRANTING REQUEST FOR
CONTINUANCE IN PART

On March 12, 2015, Student filed a document entitled “Petitioner’s Notice of Unavailability of Counsel.” This matter was filed on October 27, 2014, and a continuance was granted, pursuant to a motion from Mill Valley Elementary School District, on December 10, 2014. Based upon that order of continuance, this matter is currently set for hearing on April 1 and 2, 2015, and continuing, day to day, Monday through Thursday, at the discretion of the administrative law judge. Student is represented by Mandy Leigh, Attorney at Law, and Mill Valley is represented by Lenore Silverman, Attorney at Law.

In the “Notice of Unavailability”, which was accompanied by a declaration under penalty of perjury, Ms. Leigh states that she is unavailable for hearing in this matter on April 6, 7, 8, 13, 14, 15, 16 and 17, 2015. On April 6, 7, and 8, she will be out of state appearing before the Ninth Circuit Court of Appeals and has unspecified preexisting travel obligations on April 13, 14, 15, 16, and 17, 2015. Ms. Leigh proposes that the hearing begin at 1:30 p.m. on April 1, 2015, as scheduled, and continue on April 2, 2015.

She then proposes that the hearing be scheduled on April 3, 2015, a Friday. She asks that the hearing resume again on Thursday, April 9, 2015 and Friday, April 10, 2015, and Monday through Friday April 20-24, 2015. The order dated December 10, 2015, clearly set this matter for hearing on consecutive days beginning April 1, 2015, with the exception of Fridays¹. Therefore, Student’s notice is a request to continue the hearing, at least as to the dates Ms. Leigh has claimed unavailability.

Mill Valley opposed the request to set dates on the schedule proposed by Student because a hearing scheduled with many starts and stops would prejudice the District; the hearing would be too disjointed and should occur on consecutive days; Ms. Silverman has a medical appointment on Friday, April 3, 2015; she is scheduled to appear in hearing on other

¹ OAH generally does not schedule hearings on Fridays because prehearing conferences are scheduled.

matters beginning April 9, 2015, which has been pending since May 2014, and another scheduled to begin on April 21, 2015, which has been pending since December of 2014.

Mill Valley proposes to continue this matter to begin on May 4, 2015 because Ms. Silverman has another scheduled for the week of April 28, 2015, pending since October 2014; and because Mill Valley's Special Education Director has a preplanned, prepaid conference she will be attending on April 27-29, 2015.

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:

☒ Granted in part. Both parties agree that this hearing will not be concluded on April 1 and 2, 2015. Student has shown good cause for continuing the hearing dates of April 6, 7, and 8, 2015. Student has not shown good cause to continue the hearing on April 13, 14, 15, 16 and 17, 2015, as no details were provided regarding her unspecified preexisting travel plans or whether they were arranged before or after this matter was last set for hearing.. Given the schedules of the parties, Mill Valley's request to continue the matter to begin in May 2015² is granted and a delay of a few weeks will not prejudice Student, as it is likely, even if the case started April 1, 2015, it would not conclude until the week of May 4, 2015, if everyone's schedules were taken into consideration. The matter will be set as follows:

² May 4, 2015 is the first Monday of the month and no hearings are scheduled on those days.

Prehearing Conference: April 24, 2015, at 1:00 p.m.

Hearing: May 5, 2015, at 9:30 a.m.,
May 6 and 7, 2015, at 9:00 a.m.,
May 11, 2015 at 1:30 p.m.,
May 12 and 13, 2015, at 9:00 a.m.,
and continuing, day to day, Monday through
Thursday, at the discretion of the ALJ.

IT IS SO ORDERED.

DATE: March 13, 2015

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings