

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

DAVIS JOINT UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015040871

ORDER FOLLOWING PREHEARING
CONFERENCE AND CONTINUING
PREHEARING CONFERENCE AND
DUE PROCESS HEARING

On June 1, 2015, a telephonic prehearing conference was held before Administrative Law Judge Charles Marson, Office of Administrative Hearings. Christian M. Knox, Attorney at Law, appeared on behalf of Student. Jennifer R. Fain, Attorney at Law, appeared on behalf of the Davis Joint Unified School District. The PHC was recorded.

Based on discussion with the parties, the ALJ issues the following order:

1. Motion for Continuance. At the outset of the PHC, Davis's pending Motion to Continue Hearing was argued. The parties agreed that a continuance of some length was appropriate, but could not determine dates suitable to both. Student wished to set the hearing in late July or early August 2015, in order to determine his case as soon as possible, while the District sought to hold the hearing when staff had returned to school in the last week of August.

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).)

Davis has shown good cause for a continuance. Its lead counsel is unavailable for most of July. Witness availability in early August is uncertain. There has been no previous continuance, and the hearing dates Davis seeks fall within the 90 days OAH normally allows for a first continuance. No matter what hearing date is selected, Student will remain in his current placement with his current services; the only difference during an additional month will be that his services will continue to be provided by Davis's providers rather than by private providers. The resolution of his claims, while important, is not so urgent that an additional month will substantially prejudice his interests.

The requested continuance is granted. All dates are vacated. This matter will be set for PHC on August 17, 2015, at 1:00 P.M., and for due process hearing on August 25, 26, 27, and September 1, 2015, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

2. All other matters deferred. The resolution of all other matters is deferred to the continued PHC on August 17, 2015, at 1:00 P.M.

IT IS SO ORDERED.

DATE: June 1, 2015

_____/s/
CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings