

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. 2015050320

ORDER DENYING REQUEST FOR
CONTINUANCE

On April 30, 2015, Student filed a request for due process hearing with the Office of Administrative Hearings and a scheduling order was issued setting June 4, 2015, as the date for mediation and June 24, 2015, as the date for hearing. On May 28, 2015, Student notified OAH that she was cancelling the scheduled mediation. On May 30, 2015, the parties filed a joint request to continue. The parties specifically requested June 24, 2015 as a mediation date and asked OAH to set hearing dates, as the parties could not agree on dates between themselves. On June 1, the matter was continued and mediation was scheduled on June 24, 2015, the parties requested date, and the hearing was set to begin on July 14, 2015.

Despite choosing the date for mediation, San Mateo-Foster City School District cancelled the mediation the day before it was scheduled to be held. On June 29, 2015, the parties filed a joint request to schedule mediation for the following day, June 30, 2015. OAH granted this request. On July 1, 2015, the parties filed another joint request for continuance. The parties wanted to continue the hearing another three months because “[D]istrict witnesses are not available during current hearing dates; District’s counsel is not available in August and Student’s counsel is not available in September. October 5 is the first week all parties/witnesses/counsel are available.” There are no declarations included with the request.

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 request for good cause and considered all relevant facts and circumstances. The request is:

☒ Denied. All prehearing conference and hearing dates are confirmed and shall proceed as calendared. The parties had the opportunity to request specific dates for hearing when they filed the first request for continuance and failed to do so. The first continued mediation date was set on a date requested by the parties and then canceled the day before. Then, the parties asked, at the eleventh hour, for a mediation to be scheduled the next day. This request was accommodated. The hearing was continued to dates chosen by OAH, at the request of the parties. The parties did not indicate any dates they were not available on the first request for continuance.

The parties have not shown good cause as to why a second continuance should be granted. Surely, when the parties asked OAH to set the dates in the first request for continuance, they had looked at their schedules and the schedules of witnesses and the parties, and determined that they had no conflicts within the 90 day window they asked OAH to schedule the hearing. If another request for continuance is filed in this matter, the parties must show specific good cause, including unavoidable unavailability that was unanticipated and unknown at the time the first request for continuance was made on May 30, 2015. A first request for continuance is not a “free pass” to be used to move the dates for hearing to a date on which the parties have no intention of proceeding to hearing, with the intention of filing a second request later. Any second request for continuance must show circumstances that justify a second continuance that were not anticipated when the first request was made.

IT IS SO ORDERED.

DATE: July 2, 2015

/s/

MARGARET BROUSSARD
Presiding Administrative Law Judge
Office of Administrative Hearings