

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PARLIER UNIFIED SCHOOL DISTRICT.

OAH Case No. 2015100421

ORDER GRANTING REQUEST FOR
CONTINUANCE AND SETTING
MEDIATION, PREHEARING
CONFERENCE, AND HEARING
DATES

On November 24, 2015, Parlier Unified School District filed a request to continue the dates in this matter with the Office of Administrative Hearings, based upon the unavailability of Parlier's representative who will also be a witness in this matter. Student did not file an opposition with OAH. However, on December 1, 2015, Parlier filed a response to Student's opposition to the motion to continue. Because OAH did not have a phone number at that time for Parent, OAH contacted Parlier in order to have a copy of the opposition faxed to OAH so that Student's opposition could be considered. The opposition was faxed and received by OAH on December 2, 2015. The opposition was considered when ruling on this motion.

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:

☒ Granted. All dates are vacated. Parlier has established good cause for a short continuance in this matter. Student's opposition relies, in part, on California Government Code section 11524, which is not applicable to special education due process hearings. Parent also requests that the matter be set to begin on January 11, 2015, should a continuance be granted. However, OAH is not available for hearings during the week of January 11, 2016. This matter will be set as follows:

Mediation:	December 8, 2015, at 9:30 a.m.
Prehearing Conference:	January 22, 2016, at 3:00 p.m.
Due Process Hearing:	February 2, 2016, at 9:30 a.m., February 3, 2016, at 9:00 a.m., and February 4, 2016 at 9:00 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

IT IS SO ORDERED.

DATE: December 3, 2015

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