

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT.

OAH Case No. 2015070735

ORDER GRANTING REQUEST FOR
CONTINUANCE AND SETTING
DATES FOR HEARING

On December 4, 2015, a telephonic prehearing conference was held, and the due process hearing in this matter was set for December 15, 16 and 17, 2015. The order following the prehearing conference stated that if the hearing was not completed on December 17, 2015, it would continue day to day, Monday through Thursday, as ordered by the Administrative Law Judge conducting the hearing.

On December 7, 2015, Diandra Netto, attorney for Fresno Unified School District sent a letter to OAH, asking that if the hearing was not completed on December 17, 2015, that it not be continued to Monday, December 21, 2015, as she had a longstanding medical appointment on that date. The letter is construed as a motion to continue. No response has been received from Student.

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. This matter will be set as follows:

Due Process Hearing: December 15, 16, and 17, 2015, beginning at 9:30 a.m. on December 15, 2015, and at 9:00 a.m. on December 16, and 17, 2015, and continuing, if necessary, commencing at 9:30 a.m. on December 22, 2015. The hearing will then continue day to day, Monday through Thursday, as needed at the discretion of the ALJ.

Commented [JR1]: Did you order the late start time during the PHC? If so, drop a footnote indicating such in case someone else gets the hearing. Otherwise the 9:30 only applies to the 15th.

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 10, 2015

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings