

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ANTIOCH UNIFIED SCHOOL DISTRICT
AND SIERRA SCHOOLS AT ANTIOCH-
FREMONT.

OAH Case No. 2018070361

ORDER GRANTING REQUEST FOR
CONTINUANCE AND SETTING
PREHEARING CONFERENCE AND
DUE PROCESS HEARING

On October 15, 2018, Student filed a request for a due process hearing continuance for any time on or after November, 20, 2018, due to counsel's unavailability due to a prepaid seminar on November 14, 2018, and a prepaid vacation from November 15-19, 2018. Antioch responded to Student's motion on October 16, 2018, and agreed to a continuance only if the matter could be continued to December 11, 2018, or January 22, 2019, due to counsel and witness unavailability.

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. This is the third request for a continuance in this matter. On July 18, 2018, OAH granted Student's motion to continue the due process hearing, and set the matter for October 23, 2018. On October 2, 2018, OAH granted the parties joint motion for a continuance, and set the matter for November 13, 2018. On October 15, 2018, Student requested a continuance for any

time on or after November 20, 2018, due to a prepaid seminar and vacation, which he supported by his declaration. Thus, good cause exists for a continuance.

The request is:

☒ Granted. All dates are vacated. This matter will be set as follows:

Prehearing Conference: December 3, 2018, at 3:00 p.m.

Due Process Hearing: December 11, 2018, at 9:30 a.m., and December 12 and 13, 2018, at 9:00 a.m., continuing day to day, 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: October 16, 2018

DocuSigned by:

Cynthia Fritz

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CYNTHIA FRITZ
Administrative Law Judge
Office of Administrative Hearings