BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. HAYWARD UNIFIED SCHOOL DISTRICT,	OAH Case No. 2018010162
HAYWARD UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2018020824 ORDER GRANTING IN PART AND DENYING IN PART DISTRICT'S REQUEST FOR A CONTINUANCE, AND SETTING NEW PREHEARING CONFERENCE AND HEARING DATES

On April 4, 2018, Hayward Unified School District filed with the Office of Administrative Hearings a request to continue the dates in this matter, based upon the unavailability of Hayward Unified School District during the dates of April 17, 18, and 19, 2018, the dates currently set for hearing in this matter. Hayward claims it is unavailable because it is the respondent in an expedited due process hearing in OAH Case Number 2017120638 which has also been set for April 17, 18, and 19, 2018.[1] Hayward claims it does not have the facilities and sufficient special education administrative personnel available to participate in two separate due process hearings on April 17, 18, and 19, 2018.

On April 5, 2018, Student filed an opposition to the request for continuance claiming it was possible for Hayward to participate in two due process hearings simultaneously. Student also claimed that Parent has made arrangements to have a family member come to California to care for Student during the due process hearing in this matter, Parent has given various potential witnesses in this matter the dates currently set for hearing, and finally that a speedy resolution of this case is necessary for Student's well-being.

[1] An amended petition was filed in OAH case number 2017120638 in March 2018, which added an issue that requires an expedited hearing. Expedited hearings have very strict timelines, and thus they take precedence over non-expedited cases.

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 in part and denied in part. A continuance will be granted, but not to dates in June as requested by Hayward, since the parties and attorneys did not assert unavailability for hearing the week of April 23, 2018. All dates are vacated, and the matter will be set as follows:

Prehearing Conference:	April 13, 2018, at 1:00 p.m.
Due Process Hearing:	April 24, 25, and 26, 2018, beginning at 9:30 a.m. on April 24, 2018, and at 9:00 a.m. on April 25, and 26, 2018, 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: April 6, 2018

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings