BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. TEHACHAPI UNIFIED SCHOOL DISTRICT,	OAH Case No. 2015060035
TEHACHAPI UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2015061178 ORDER DENYING REQUEST FOR CONTINUANCE

On May 19, 2015, Student filed a due process hearing request (complaint) naming District. By order dated June 25, 2015, the hearing on Student's complaint was continued for approximately 90 days to October 12-15, 2015.

On June 26, 2015, District filed a complaint naming Student. These matters were consolidated for hearing by order dated July 17, 2015. That order provided that the 45-day timeline for issuance of the decision in the consolidated cases would be based on the filing of Student's complaint, and confirmed the hearing dates of October 12-15, 2015.

On September 28, 2015, District filed an amended complaint. On September 29, 2015, the parties filed a joint second request to continue the dates in this matter.

APPLICABLE LAW

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).)

DISCUSSION AND ORDER

The parties seek a continuance, supported by the declaration of District's counsel, on the basis that: (i) timelines have been reset by District's amended filing, (ii) Student intends to amend his complaint, (iii) Student's counsel has another due process matter scheduled to go to hearing on October 12, 2015, (iv) the parties have not yet mediated, and (v) Student's counsel is not available for hearing until the week of January 19, 2016.

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.

Per the consolidation order of July 17, 2015, all dates are calculated from the filing of Student's complaint, and the filing of an amended complaint by District does not reset dates or extend the timeline for a decision to be rendered. Student has not amended his complaint, and a motion to continue on that basis is premature. The parties first requested to reschedule mediation on June 8, 2015, almost four months ago, and the parties have had ample opportunity to participate in the voluntary mediation process; no further continuances on this basis are warranted. The parties have been granted one continuance of 90 days, and good cause for another continuance of 90 days has not been shown.

IT IS SO ORDERED.

DATE: September 30, 2015

/S/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings