BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. AVESON SCHOOL OF LEARDERS (CHARTER SCHOOL).	OAH Case No. 2015021006 ORDER DENYING REQUEST FOR CONTINUANCE AND CONFIRMING PREHEARING CONFERENCE AND DUE PROCESS HEARING DATES

On September 11, 2015, District filed a motion to continue the due process hearing, which consisted of a declaration under penalty of perjury by District's counsel. Student filed an opposition.

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 case was originally filed by Student in February 2015. From that time to the present, Student has twice amended his complaint, and OAH has granted several requests by the parties to continue the hearing. The hearing is currently set to start on September 29, 2015, and to proceed day to day Monday through Thursday as needed at the discretion of the hearing officer. The prehearing conference is set for September 18, 2015, at which time the parties will discuss their request for a specific number of days for hearing.

District's counsel asserts that he has a calendar conflict with a Federal court case oral argument on October 1, 2015, which may conflict with the hearing in this case. He therefore seeks a continuance for one week to accommodate his calendar conflicts. Student opposes the motion, requesting that the hearing start as scheduled and offering to "go dark" on October 1, 2015, with the permission of the hearing judge. Student contends that his counsel is unavailable for the following two months.

District's counsel's request based on a possible conflict on one of the days for hearing for oral argument in Federal court does not establish good cause to delay the start of the hearing in this case. The request for continuance is denied. The parties may address any specific calendar conflicts at the prehearing conference or on the first day of hearing. All previously set dates are confirmed.

IT IS SO ORDERED.

DATE: September 16, 2015

/S/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings