BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ANTIOCH UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017061033 ORDER DENYING REQUEST FOR CONTINUANCE

On December 8, 2017 Antioch Unified School District filed a request to continue the dates in this matter with the Office of Administrative Hearings. Antioch wishes to continue this matter, set to begin hearing on December 28, 2017 because the Antioch and key witnesses are not available for hearing because it is winter break when the district office is closed and District staff are expected to be on vacation and because Antioch and its counsel have "heavy calendars for hearings, making it difficult to properly prepare" Antioch's case for hearing. Antioch proposes that the hearing be continued to mid-February 2018. Supplemental declarations were received from two of Antioch's attorneys. Student filed a limited opposition stating that he does "not oppose a brief continuance of the due process hearing up to and including January 8, 2018, in observance of the holidays."

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:

☒ Denied. All prehearing conference and hearing dates are confirmed and shall proceed as calendared. Antioch has failed to show the unavailability of any specific witness or party. Winter Break or observance of the holidays is not good cause for a continuance. Further, this matter was filed in June 2017 and has been pending for 6 months. Although counsel for Antioch claims that they have a "heavy" hearing schedule, they did not show that the cases they claim take precedence were filed prior to this case. As to the unavailability of Antioch as a hearing location, the parties can discuss moving the hearing to the Oakland OAH office at the prehearing conference.

IT IS SO ORDERED.

DATE: December 12, 2017

DocuSigned by:
Margaret Gibson
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MARGARET GIBSON
Division Presiding Administrative Law Judge
Office of Administrative Hearings