BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: OAKLAND UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013040377 ORDER DENYING REQUEST FOR CONTINUANCE

This matter is set for a due process hearing to begin on Thursday, August 29, 2013, and to continue thereafter, day to day, at the discretion of the presiding Administrative Law Judge. On August 15, 2013, Parent, on behalf of Student, filed a request to continue the hearing in this matter on the ground that she needs more time to retain legal counsel. On August 16, 2013, Student again filed the same motion. On August 19, 2013, District filed a reply opposing the request.[1]

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).)

[1] District's reply asserts that the hearing will start on September 4, 2013, a date ordered before District's amended complaint restarted the timelines and a new scheduling order was issued on July 31, 2013, setting the hearing to begin on August 29, 2013.

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. Parent has had an extensive continuance and did not establish good cause to further continue this case. District filed this request for a due process hearing on April 8, 2013. The parties stipulated to a lengthy continuance, to which OAH agreed. The record shows that Student's attorney of record withdrew on July 17, 2013. Student has therefore had about a month to seek new counsel. It is Parent's responsibility to represent Student and prepare for hearing.[2]

IT IS SO ORDERED.

Dated: August 20, 2013

/s/
DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

[2] A mandatory telephonic PHC is set for this Friday, August 23, 2013, at 1:00 p.m. The written PHC statements of the parties, including lists disclosing proposed witnesses and documents, are required to be filed prior to the PHC. The original OAH scheduling order dated April 9, 2013, contains information as to the requisite contents of the PHC statement.