BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT,<br><br>v.<br><br>PARENT ON BEHALF OF STUDENT. | OAH CASE NO. 2013040629<br><br>ORDER DENYING STUDENT'S REQUEST FOR CONTINUANCE WITHOUT PREJUDICE |

On April 25, 2013, Student filed a motion to continue the hearing in this matter to either the last two weeks of June 2013, or the second week of July 2013. The reasons given were unavailability of Student's expert and Student's counsel. On May 1, 2013, District filed an opposition, stating that it was not opposed to a short continuance to dates prior to the end of the school year on June 11, 2013, but opposing further continuances on the ground of difficulty of guaranteeing District witnesses. Student filed a reply to the opposition on May 1, 2013.

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. District's right to proceed as the petitioning party with the burden of proof must be weighed against Student's hearing rights to counsel and to present evidence.

Here, Student's motion was not supported by specific evidence of the unavailability of counsel. While the exhibits contained an email expressing a preference for dates, the supporting declarations did not specifically establish counsel's unavailability for every day until the last two weeks of June. Similarly, Student's motion did not demonstrate good cause to delay the entire hearing just for the testimony of one witness whose testimony should not require more than a few hours and could potentially even be taken telephonically. Given that District has indicated a willingness to agree to a short continuance based on the availability of its witnesses prior to June 11, 2013, it is not reasonable to delay District's hearing for 45 days or more based on the limited availability of one Student witness, whose testimony would not require a full day.

Accordingly, Student's motion is denied without prejudice to the parties discussing mutually agreed dates for the hearing at the PHC that would result in all District witness testimony being taken prior to June 11, 2013, and at the discretion of the hearing ALJ, a way to obtain the testimony of Student's expert.

IT IS SO ORDERED.

Dated: May 02, 2013

/s/

RICHARD T. BREEN
Presiding Administrative Law Judge
Office of Administrative Hearings