BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
UPLAND UNIFIED SCHOOL DISTRICT,	OAH Case No. 2019041141
v.	ORDER GRANTING REQUEST FOR CONTINUANCE AND SETTING PREHEARING CONFERENCE AND DUE PROCESS HEARING
PARENT ON BEHALF OF STUDENT.	

On April 25, 2019, Upland Unified School District filed a Request for Due Process Hearing naming Parent on Behalf of Student. On April 30, 2019, Parent filed a request for continuance for 90 days to find a bilingual attorney, and a separate motion to dismiss. On May 3, 2019, Upland filed separate oppositions to the request for continuance and to the motion to dismiss. On May 7, 2019, OAH issued an order denying the motion to dismiss. On May 9, 2019, Parent filed a second motion to dismiss, referencing the April 30, 2019 Motions, and again requested a 90-day continuance of the due process hearing and asked to dismiss the case on the ground that Student could not proceed without legal representation.

On May 13, 2019, Administrative Law Judge Sabrina Kong held the prehearing conference in this matter. She unsuccessfully made three attempts to contact Parent by telephone. The PHC proceeded without Parent's participation. ALJ Kong denied the request for a 90-day continuance based on Parent's failure to appear at the PHC. OAH issued a PHC Order translated into Spanish for Parent and the Order denying the motion to dismiss translated into Spanish.

On May 21, 2019, the undersigned ALJ held the first day of the due process hearing. Mother represented Student. She was assisted by a certified Spanish interpreter. Attorney Maryam Rastegar appeared on Upland's behalf. The hearing was recorded.

Mother renewed her request for a 60-90-day continuance of the due process hearing to allow her time to find a bilingual attorney to represent Student. She explained her failure to participate at the PHC, asserting she was available on the date of the PHC, but the ALJ called her home phone, while she was at work waiting for the call on her mobile phone. She also explained that she had made some efforts to but had not yet located a bilingual attorney to represent Student. Upland objected to a continuance of the hearing.

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).)

After hearing oral argument from both parties, considering a discussion of available dates for both sides, and considering all facts and circumstances, the ALJ granted Parent's request for continuance on the record. Good cause exists to grant a first continuance in this matter to allow Parent the opportunity to retain counsel. Parent is encouraged to retain counsel in a timely manner. Because this case will be nearly four months old by the time of hearing, OAH will not entertain a request from newly retained counsel for a further continuance of the due process hearing except for extraordinary good cause.

Additionally, Mother represented at hearing that she did not receive Upland's exhibit binder, which its attorney represented was sent to Parent by overnight service on May 13, 2019. Mother represented that she also did not exchange documents with Upland's counsel, because she did not receive a Spanish version of the PHC Order until after the exchange date. Student did not file a PHC statement. Therefore, a PHC will be scheduled.

All prehearing motions must be filed no later than three business days before the PHC. If a party files a late motion, it shall be accompanied by a declaration under penalty of perjury establishing good cause as to why it was not filed three business days before the PHC.

ORDER

1. Student's request to continue the due process hearing is granted for good cause. The matter shall be scheduled as follows.

2. Prehearing Conference: August 26, 2019, 10:00 a.m. Student shall timely file a PHC statement in compliance with the Scheduling Order issued on April 26, 2019. If Student is not represented by an attorney by August 23, 2019, Parent shall notify OAH no later than noon on August 23, 2019, at what phone number the ALJ shall attempt to reach Parent for the PHC.

3. Due Process Hearing: September 4, 2019 at 10:00 a.m., and September 5, 2019, at 9:30 a.m., unless otherwise ordered.

4. OAH does not contemplated granting any further continuances except under extraordinary circumstances established by declaration under penalty of perjury.

5. The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

DATE: May 21, 2019

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Adrienne L. Krikorian
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ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings