BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
UPLAND UNIFIED SCHOOL DISTRICT,	OAH Case No. 2018120181
v.	ORDER DENYING STUDENT'S REQUEST FOR CONTINUANCE
PARENT ON BEHALF OF STUDENT.	

On February 14, 2019, Student filed a request to continue the dates in this matter with the Office of Administrative Hearings, based upon Parent's desire to hire a bilingual special education attorney. February 15, 2019, Upland Unified School District opposed the request as untimely and prejudicial to Upland. On February 19, 2019, Student filed a reply.

APPLICABLE LAW

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).)

DISCUSSION AND ORDER

Student seeks a 45-day continuance for Parent to retain bilingual counsel specializing in special education law. However, the declaration of Parent fails to demonstrate good cause for a continuance, stating only that she has personal knowledge of Student's education and health, having attended individualized education program team meetings and all of Student's

medical appointments. Student's motion is also untimely made, more than three days after the prehearing conference.

Upland opposes the motion as untimely, and asserts that a continuance would be prejudicial both because (1) it has been a year since it first attempted to assess Student to ensure he has an appropriate program, and (2) it has made arrangements for Upland witnesses to take time off for testimony. Student replies that Student is entitled to legal representation.

Student has filed many motions, requests and oppositions in this matter, including (with filing dates): a request for dismissal (December 12, 2018), reply re dismissal (December 13, 2018), correspondence (December 14, 2018), a prehearing conference statement (December 18, 2018), opposition to consolidation (January 16, 2019), a motion to withdraw (January 23, 2019), correspondence re an investigation (February 7, 2019), a motion for investigation ***and continuance*** (February 11, 2019), a request to dismiss (February 11, 2019), reply re dismissal (February 13, 2019), a prehearing conference statements (February 13, 2019). In none of these documents, including the request for a continuance filed after the PHC of February 4, 2019, did Parent request an opportunity to retain counsel. Parent participated in the PHC of December 21, 2018 and did not request an opportunity to retain counsel. In addition, this matter was already continued for approximately 60 days at the December 21, 2018 PHC at Upland's request, providing Parent ample time in which to retain counsel.

As succinctly put in Upland's opposition, Parent has represented Student in several due process matters against Upland, and is familiar with OAH due process procedures. The December 21, 2018 PHC order clearly stated "**Any prehearing motion is due to OAH no later than three business days before the PHC, or a showing of good cause is required as to why it was not possible to file the motion by that date,**" and a Spanish language translation of the order was served on Parent on December 24, 2018. Parent's declaration fails to explain why a request for continuance was not filed three business days prior to the February 4, 2019 PHC, or what attempts to retain counsel have already been made that may have resulted in an untimely motion. Parent did not participate in the conversation regarding hearing dates at the February 4, 2019 telephonic PHC, when Upland's attorney and the ALJ were on the line, and did not take the opportunity to explain attempts made to retain counsel. Accordingly, Student has failed to show good cause as to why his motion for a continuance could not have been timely made.

A Spanish language interpreter has been included in all PHCs in this matter, and OAH orders have all been translated into Spanish for Parent's benefit. The February 4, 2019 PHC order clearly stated that a Spanish language interpreter is required at the due process hearing. As such, Parent is not at a disadvantage in presenting Student's defense due to her basic ability to speak English.

Lastly, the sole issue at hearing is whether Upland is entitled to assess Student pursuant to the March 2018 assessment plan. No component of Student's educational

program will be changed as a result of this due process hearing. Parent has filed a PHC statement identifying witnesses to be called and evidence to be offered, including the July 2017 settlement agreement that Student contends bars further assessment, demonstrating that Parent will be able to present a defense to Upland's one claim on Student's behalf.

Student's eleventh hour request for a continuance is untimely, and without a showing of good cause for delay in making such a motion or seeking counsel. Accordingly, Student's motion for a continuance is denied.

IT IS SO ORDERED.

DATE: February 19, 2019

DocuSigned by:
Alexa Hohensee
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ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings