BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: BURBANK UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013110175 ORDER DENYING REQUEST FOR CONTINUANCE, WITHOUT PREJUDICE

On February 4, 2014, Parent and Student (collectively, Student) filed a request to continue the prehearing conference and due process hearing dates in this matter for 90 days, based upon Student's recent retention of any attorney who requires 90 days to prepare for the case and who also has prior scheduling conflicts. On February 4, 2014, Burbank Unified School District (District) opposed the request, contending that Student's request does not demonstrate good cause.

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 without prejudice. All prehearing conference and hearing dates are confirmed and shall proceed as calendared.

First, this matter has been pending since November, 2013, and has been continued twice before, once by operation of law when District filed an amended complaint, and once by way of stipulation between the parties. Under these circumstances, Student has had plenty of time to retain counsel since the filing of this matter. Second, new counsel obviously had notice of the currently scheduled hearing dates of March 25 through March 27, 2014, when she agreed, however tentatively, to represent Student.

District is correct that Student has not shown good cause to justify a 90-day continuance of the matter. However, OAH is inclined to grant a short continuance of the hearing of no more than 30 days from the currently scheduled hearing dates to permit Student's counsel time to obtain and review Student's records and to resolve any scheduling conflicts. Therefore, Student's request is denied without prejudice. Student may re-submit his request to continue after Student attempts, in good faith, to discuss and confer with the District regarding possible prehearing conference and hearing dates that fall within the time frame set forth in this Order. Forms are available on the OAH website that illustrate the procedure. Trial setting conferences are set only in unusual cases. If the parties are unable to agree on hearing dates, Student may re-submit his request to continue and request OAH to select dates that fall within the time frame set forth in this Order.

IT IS SO ORDERED.

Dated: February 5, 2014

/s/

ELSA H. JONES
Acting Presiding Administrative Law Judge
Office of Administrative Hearings