BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013051091 ORDER DENYING THIRD REQUEST FOR CONTINUANCE

On October 17, 2013, the parties filed a third stipulated request for a continuance, which the parties incorrectly identified as a second request. The continuance seeks the same PHC and hearing dates that were sought in a joint second continuance request dated September 20, 2013, which was denied as being unreasonably long on September 24, 2013. The reason given for the third continuance is that District, without any specific facts, claims it is "unavailable" due to a conflict with hearing dates that were set on September 30, 2013 during a PHC in OAH Case number 2013050611.

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. At the time the second continuance was granted on September 24, 2013, the parties were expressly instructed that additional continuances were not contemplated and that hearing dates in January were not reasonable. At all times, OAH has indicated in its orders that all hearings that are conducted will proceed "continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge ….." District now argues that it cannot proceed to this hearing because of the possibility that one other OAH hearing, which starts a week earlier, may overlap. The mere assertion that District is "unavailable," is not sufficient to show good cause for a third continuance. Even if the dates overlap, nothing in IDEA specifies that a District, especially a District of this size, is excused from conducting more than one IDEA hearing at once, or back to back hearings. Regardless, any conflict is of District's own making. District was on notice of the dates in this matter as of September 24, 2013, that no further continuances were contemplated, and that a request for January of 2014 was unreasonable, such that a conflict caused by hearing dates being set in another matter at a prehearing conference on September 30, 2013, can only be attributed to District. Finally, rather than support a further continuance, District's assertion that it will not be available until January of 2014 due to school holidays and other hearings if the current dates are not used, supports a denial of the current request. No further continuance requests are contemplated for any reason.

IT IS SO ORDERED.

Dated: October 21, 2013

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