

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BELLFLOWER UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014040078

ORDER DENYING DISTRICT'S
REQUEST FOR CONTINUANCE

On May 6, 2014, District filed a request to continue the prehearing conference and hearing to dates convenient to OAH on the ground that District and its counsel had activities scheduled at unspecified times and durations on May 23, 27, 29, and 30, 2014. A previous request for continuance submitted by both parties was denied because the parties had not agreed on dates. On May 7, 2014, Student opposed District's request on the ground that District had not shown good cause because some of the days District listed are Fridays, when the hearing would be dark anyway, and the other conflicts were not supported by specific times or durations. In addition, Student noted that District was unwilling to stipulate to hearing dates in the summer.

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 has not made a showing of good cause for a continuance. As was clear from the OAH scheduling order, the matter was scheduled to proceed on Mondays through Thursdays only, such that no conflict is presented by Friday May 23 or Friday May 30. Similarly, District has not demonstrated that any other alleged conflict with its counsel's schedule is for the full day on May 27 or May 29, the remaining dates District claims unavailability. Even so, by its request, District has demonstrated that it is available on May 22, 26, and 28, 2014, for full days. Thus, there is no reason the hearing cannot proceed and any specific scheduling requests by District's counsel can be addressed at the prehearing conference. Finally, although nothing in the IDEA provides for suspension of hearings during the summer months when school is out, District's unwillingness to stipulate to dates in the summer also demonstrates that the hearing must proceed as scheduled.

IT IS SO ORDERED.

DATE: May 07, 2014

/s/

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