

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

MAGNOLIA ELEMENTARY SCHOOL
DISTRICT,

OAH CASE NO. 2014040399

MAGNOLIA ELEMENTARY SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO.

ORDER DENYING REQUEST FOR
CONTINUANCE OF PREHEARING
CONFERENCE AND DUE PROCESS
HEARING

On June 11, 2014, Student a request to continue the dates in this matter until late September, based upon counsel's inadvertent neglect of a conflicting federal court proceeding on July 9, 2014. The parties stipulated to the current dates of July 7, 8, 9, and 10, 2014, and OAH granted their initial joint request for continuance based upon their stipulation. At the time of the time of the stipulation, Student's counsel failed to account for and calendar a previously scheduled court appearance. District opposes the continuance. As set forth in the detailed declarations filed by the parties' respective counsel and their moving, opposition, and reply papers, their various personal, professional and witness availability challenges, prevent them from reaching a reasonable compromise which would have allowed this matter to go forward in a timely and expeditious manner that would also compensate for Student's one day conflict.

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, except that the hearing shall go dark on July 9, 2014, if Student's counsel still has a scheduling conflict with the identified federal court proceeding. Student moved for the continuance, and provided good cause for her scheduling conflict, but did not provide good cause as to why the matter could not proceed as calendared with reasonable scheduling accommodations made to compensate for the remaining hearing day. District objected to the continuance, but did not provide good cause as to why the remaining hearing day could not be accommodated without proceeding as scheduled on July 9, 2014, and not later in July, in a variety of ways (subject to the discretion of the ALJ hearing the matter), e.g., by organizing the witness schedule so that witnesses are available during the scheduled hearing, by arranging for alternative means for witnesses to appear, including by telephone, which would reduce hearing time and accommodate travel schedules, or by affidavit, which would limit hearing time to witness cross-examination, or by having one of the two counsel appearing in this matter, appear the remaining hearing day. In addition, the ALJ hearing the matter has the discretion to proceed on Friday, July 11, 2011, if available, and the parties may also request this accommodation from the ALJ at the commencement of the hearing.

IT IS SO ORDERED.

DATE: June 17, 2014

/s/

EILEEN COHN
Administrative Law Judge
Office of Administrative Hearings