

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014070093

ORDER DENYING REQUEST FOR
CONTINUANCE

On July 18, 2014, Parent on behalf of Student filed with the Office of Administrative Hearings a request to continue the dates in this matter. This is an initial request for a continuance. As this Order denies Student's request, OAH has not waited a full three days for a response by Elk Grove Unified School District (Elk Grove).

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 hearing dates and timelines shall proceed as calendared. Here, the Student has utilized the OAH form "Request for Continuance of Initial Special Education Due Process Hearing Date and Initial Mediation Date." This form may only be used when the parties mutually agree to continue the initial dates that were identified in the scheduling order. Although Parent attaches electronic correspondence from Elk Grove indicating that its attorney is agreeable to determining dates after August 4, 2014, for the parties to meet, presumably for a continued mediation date, the correspondence does not clearly establish that Elk Grove is agreeing to continue the hearing and prehearing dates. OAH encourages Elk Grove and Student to attempt to agree to dates if both parties agree to a continuance. Otherwise the parties may check the box requesting that OAH select dates for hearing. In the absence of Elk Grove's agreement to continue this matter and sign a joint request to continue dates, Student may re-submit a motion to continue dates in this matter specifying the reason he is unavailable for the dates currently scheduled and proposing new dates.

IT IS SO ORDERED.

DATE: July 22, 2014

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings