

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

DESERT SANDS UNIFIED SCHOOL
DISTRICT,

v.

STUDENT.

OAH Case No. 2014051076
(Primary)

DESERT SANDS UNIFIED SCHOOL
DISTRICT,

v.

STUDENT.

OAH Case No. 2014031057

ORDER DENYING REQUEST FOR
CONTINUANCE

On September 22, 2014, Student filed a request to continue the dates in this matter with the Office of Administrative Hearings. District has not submitted a response to Student's request.

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).)

Here, Student seeks a continuance based upon several grounds, each which lacks good cause.

First, Student complains that he is named solely as a party based upon improper factual allegations made by District. However, as detailed in the OAH Prehearing Conference Order of September 15, 2014, Student's parent was dismissed as a party on the basis that Student had reached the age of majority and has failed to transfer his educational rights to Parent. Under federal and California special education law, when a student eligible for special education reaches the age of 18 years, the special education rights previously held by the parent transfer to the student. (34 C.F.R. § 300.520(a)(ii)(2006); Ed. Code, § 56041.5.)

Student next seeks to continue the hearing based upon a desire to peremptory challenge Administrative Law Judge Robert Helfand. However, the undersigned ALJ is assigned to convene the hearing for this matter, and reassigned the matter before Student made the peremptory request. Consequently, Student's request is moot.

Finally, Student seeks to appeal a recent OAH American with Disabilities Act accommodation request determination. However, an appeal of an ADA determination does not constitute good cause for a continuance.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

☒ Denied. All hearing dates are confirmed and shall proceed as calendared.

IT IS SO ORDERED.

DATE: September 22, 2014

/s/
PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings