

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MODESTO CITY SCHOOLS,

v.

STUDENT.

OAH Case No. 2014110141

ORDER DENYING REQUEST FOR
CONTINUANCE

On October 29, 2014, the Modesto City Schools filed a request for due process hearing against Student. On November 5, 2014, the Office of Administrative Hearings issued a scheduling order in this matter. On November 6, 2014, Modesto filed a request to continue the dates in this matter.

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. OAH will generally grant an initial request for continuance if it is jointly requested, and the parties propose dates within the parameters set forth on OAH's joint request for continuance form. Here, while Modesto used the form, there

is no indication that Student has agreed to the continuance request. Accordingly, this is a motion to continue by one party and it requires good cause. Modesto has provided no information from which good cause can be established. Furthermore, there is no information establishing that Modesto's legal counsel attempted to meet and confer with Student to see if Student was amenable to a continuance. In light of the fact that OAH issued the scheduling order on November 5, 2014, and even though OAH delivers its orders utilizing overnight service, it is extremely likely that Student had not received the scheduling order at the time Modesto filed the request for continuance. As Modesto has not met and conferred with Student and has not established good cause for a unilateral request to continue, the request is denied without prejudice. Modesto is required to meet and confer with Student prior to filing another request to continue.

IT IS SO ORDERED.

DATE: November 6, 2014

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings