

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

BUENA PARK SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015010467

ORDER DENYING STUDENT'S
REQUEST TO END THE DUE
PROCESS HEARING AND
GRANTING DISTRICT'S REQUEST
TO CONTINUE THE DUE PROCESS
HEARING TO JUNE 16, 2015.

The fifth day of the due process hearing in this matter proceeded as scheduled on June 8, 2015, before Administrative Law Judge Marian H. Tully, Office of Administrative Hearings. Attorney Carlos Gonzales represented Buena Park School District. Student was represented by Parents. A Romanian interpreter was provided.

Parents objected to going forward with the due process hearing on the grounds the proceedings were not fair. For the reasons set forth and explained on the record, the ALJ declined to end the due process hearing. Parents informed the ALJ they would not participate in the hearing and left the premises. The hearing proceeded with District's speech/language assessor and the director of special education, the two witnesses available on June 8, 2015. District requested a continuance to June 16, 2015, to accommodate the schedules of Student's special education teacher and the occupational therapist that assessed Student because these witnesses were not available on June 9, 2015, the next scheduled day of the hearing.

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, or an 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; 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).)

The interests of justice are served by the requested continuance because Student's special education teacher and the occupational therapist that assessed Student are essential witnesses. District demonstrated that these two witnesses were not available on June 9, 2015, and these are the only two remaining witnesses District intends to call. Parents' departure from the due process hearing on June 8, 2015, was an unanticipated change in the status of the case. District was reasonable in scheduling two days for the direct and cross examination of the speech/language assessor and the director of special education because these key witnesses were to be called by both parties. Moreover, on June 2, 2015, Parent's requested the ALJ to order District to make Student's special education teacher and the occupational therapist available in Student's case. Accordingly, District made arrangements for their testimony and Parents are not prejudiced by this continuance given that even though they did not participate on June 8, 2015, they will have an opportunity to question these witnesses on June 16, 2015.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is granted. The due process hearing is continued until 9:30 a.m., June 16, 2015.

IT IS SO ORDERED.

DATE: June 9, 2015

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings