

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

GARVEY SCHOOL DISTRICT.

OAH Case No. 2018060917

ORDER DENYING REQUEST FOR  
CONTINUANCE

On June 20, 2018, Student filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings, naming Garvey School District. On July 12, 2018, OAH granted the parties' joint request for mediation and a continuance. The mediation was set for August 24, 2018, the prehearing conference for October 12, 2018, and the due process hearing for October 23-25, 2018. On August 10, 2018, the mediation date was changed pursuant to the parties' request, to August 22, 2018. On August 21, 2018, Garvey cancelled the mediation. On September 24, 2018, Student filed an amended complaint, which was treated as a Motion to Amend. OAH granted the amendment on October 9, 2018, and issued a scheduling order setting the prehearing conference for November 26, 2018 and the hearing for December 4, 2018. On October 19, 2018, Garvey filed a motion to continue, stating as its reason that Garvey's counsel was not available for December 4, 2018, because she was otherwise engaged, defending a district, in OAH Case No. 2018080950. Counsel also stated that no other counsel was authorized to represent Garvey, and that the hearing would require more than one day to complete. As discussed below, these grounds do not state good cause, and the continuance is denied.

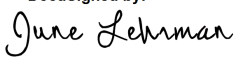
A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances 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. Counsel's calendar does not in and of itself constitute good cause to continue the hearing. Moreover, the purported unavailability on December 4, 2018, for "defending a district" in OAH Case No. 2018080950, appears to refer to the mediation scheduled for that day in that matter, not another hearing. The need for additional hearing days does not constitute good cause for a continuance, however the need for additional hearing days may be discussed at the prehearing conference.

IT IS SO ORDERED.

DATE: October 22, 2018

DocuSigned by:  
  
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JUNE LEHRMAN  
Administrative Law Judge  
Office of Administrative Hearings