

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
TUSTIN UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2021110515

ORDER DENYING REQUEST FOR CONTINUANCE

DECEMBER 13, 2021

On December 10, 2021, Parent Two, on behalf of Student, filed with the Office of Administrative Hearings, referred to as OAH, a request to continue this matter, based upon wanting legal advice or to retain counsel. On December 10, 2021, Tustin Unified School District opposed the 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. (Ed. Code, § 56505, subd. (f)(3); 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 or imposing conditions on the continuance; and any other relevant fact or circumstance. (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. Tustin filed a request for due process on November 18, 2021. Tustin named both Parents on behalf of Student. Parents are divorced and share educational decision-making rights for Student. Both Parents were served a copy of the complaint and scheduling order setting the prehearing conference and due process hearing dates. Parent One participated in the prehearing conference and is available to represent Student at the due process hearing. Parent Two, who requested the continuance, refused to participate in the prehearing conference. The undersigned Administrative Law Judge spoke to Parent Two at the beginning of the prehearing conference and told Parent Two that the hearing was going forward on December 14, 2021, and if Parent Two had any questions about the hearing Parent Two should participate in the prehearing conference.

Parent Two declined to participate in the prehearing conference and did not state Parent Two was seeking legal representation or that Parent Two was going to request a

continuance. Parent Two did not provide any reason in the request for continuance as to why Parent Two waited until two business days prior to the hearing to request a continuance. Parent Two did not establish good cause for a continuance. The due process hearing will commence as scheduled on December 14, 2021, at 9:30 AM.

IT IS SO ORDERED.

Linda Johnson

Linda Johnson

Administrative Law Judge

Office of Administrative Hearings