BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2019060591
v.	ORDER DENYING EMPIRE SPRINGS' MOTION FOR CONTINUANCE OF EXPEDITED HEARING
EMPIRE SPRINGS CHARTER SCHOOL.	

Student filed a request for due process hearing naming Empire Springs Charter School on June 13, 2019. OAH determined that the complaint included issues that required an expedited hearing under title 20 United States Code section 1415(k). On June 14, 2019, OAH issued a scheduling order setting dual hearing dates. The expedited prehearing conference is scheduled for July 1, 2019, and the expedited hearing is scheduled for July 9, 10, and 11, 2019.

On June 27, 2019, Empire Springs Charter filed a motion to continue the expedited hearing. Empire Springs Charter argues that Student filed his complaint on the last day of the 2018-2019 regular school year. Because school is not in session during the summer and the charter school does not offer summer school to the general education population, Empire Springs Charter argues the 20-day timeline for expedited hearings under title 20 United States Code section 1415(k)(4)(B) and title 34 Code of Federal Regulations section 300.532(c)(2) should begin on the first day of the 2019-2020 school year. Student filed an opposition to the motion to continue on July 27, 2019.

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. Here, the only declaration supporting its motion for continuance established the charter school's calendar and that it did not offer summer school for general education students. Empire Springs Charter offered no evidence that supports a finding of good cause to continue the expedited hearing dates, as provided for in Cal. Rules of Court rule 3.1332(d). For that reason, the motion is denied.

The expedited hearing dates are confirmed. The telephonic prehearing conference will proceed on July 1, 2019, at 1:00 p.m. The expedited due process hearing shall proceed on July 9, 10, and 11, 2019, and continuing day to day at the discretion of the hearing administrative law judge. The hearing shall start at 9:30 a.m. on the first day and 9:00 a.m. on all other hearing days, unless otherwise ordered.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

IT IS SO ORDERED.

DATE: June 27, 2019

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Adrienne L. Krikorian
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ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings