BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. PLACENTIA-YORBA LINDA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2019050861 ORDER DENYING REQUEST FOR CONTINUANCE

On May 17, 2019, Parent on behalf of Student filed a Due Process Hearing Request with the Office of Administrative Hearings, naming Placentia-Yorba Linda Unified School District. On May 21, 2019, OAH issued a scheduling order setting the prehearing conference for July 8, 2019, and the due process hearing for July 16, 17, and 18, 2019.

On May 24, 2019, Placentia-Yorba Linda Unified filed a notice of representation, identifying the law firm Atkinson, Andelson, Loya, Rudd & Romo as its legal representative. The notice of representation was signed by Alefia Mithaiwala, an attorney with the firm.

On June 25, 2019, Placentia-Yorba Linda Unified filed a motion to continue the dates in this matter. In support of its motion, Placentia-Yorba Linda Unified filed declarations by Ms. Mithaiwala and Renee Gray, Placentia-Yorba Linda Unified's Executive Director of Special Education/SELPA.

On June 26, 2019, Student filed an opposition to the motion.

APPLICABLE LAW AND DISCUSSION

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. OAH considers all relevant facts and circumstances in determining whether good cause exists to grant an extension. (See Cal. Rules of Court, rule 3.1332(d).)

Placentia-Yorba Linda Unified seeks a continuance in this matter and therefore, carries the burden of establishing good cause to grant an extension. First, Placentia-Yorba Linda Unified contends that its attorney, Ms. Mithaiwala is unavailable to participate in the PHC and to adequately prepare for hearing as she has a preplanned, out-of-state vacation from June 26, 2019, to July 12, 2019. Attached to Ms. Mithaiwala's declaration is the

itinerary for the travel, which indicates the travel flights were purchased on October 27, 2018. However, Placentia-Yorba Linda Unified's motion and supporting declarations, fails explain how Ms. Mithaiwala's pre-planned vacation, arranged seven months prior to the filing of the notice of representation, have impeded, and would impede Ms. Mithaiwala's ability to prepare for hearing. The motion fails to explain why the law firm assigned Ms. Mithaiwala or why she accepted assignment to represent Placentia-Yorba Linda Unified knowing her availability to prepare for hearing would be impacted by her preplanned vacation. In addition, the motion fails to explain why another attorney in the firm could not appear in place of Ms. Mithaiwala at the prehearing conference or assist in the preparation of Placentia-Yorba Linda Unified's defense as she will have returned and be available for the hearing.

Secondly, Placentia-Yorba Linda Unified contends that a continuance is required as Ms. Gray will be traveling out of California in the weeks leading up to the hearing, and therefore, she would not have adequate time to prepare for hearing. Placentia-Yorba Linda Unified also argues that pertinent witnesses are unavailable during the hearing dates and that the availability of some witnesses for hearing remain known. However, the motion and the supporting declarations fails to demonstrate how the preplanned out-of-state vacations and trainings have impeded Ms. Gray or any other staff from Placentia-Yorba Linda Unified from preparing for hearing. Hearing preparation should have begun immediately upon Placentia-Yorba Linda Unified receiving Student's due process hearing request, not when settlement negotiations broke down. The motion fails to describe the efforts made by Placentia-Yorba Linda Unified to subpoena and prepare pertinent witnesses, or what efforts were made to ascertain and secure their availability for hearing prior to filing its request for a continuance.

In addition, the unavailability of assistant principal, David Okamoto until after he returned on July 23, 2019 from his scheduled vacation, does not preclude the hearing from going forward as scheduled. The ALJ at hearing could schedule additional days for hearing to accommodate his availability. Furthermore, the motion fails to explain why the request to continue the dates in this matter was not filed sooner, as the conflicts were known when OAH issued the scheduling order over a month ago, especially when Placentia-Yorba Linda employees were not on summer recess and declarations could be obtained about their unavailability. Placentia-Yorba Linda Unified's motion to continue the dates in this matter, with its supporting declarations, does not establish good cause to grant an extension. Accordingly, the motion to continue is denied. Student is advised that if Student discovers at hearing that a Placentia-Yorba Linda witness needed for Student's case is not available during presently scheduled hearing dates that OAH will not continue the hearing for Student to complete her case-in-chief.

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 26, 2019

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Rommel P. Cruz
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ROMMEL P. CRUZ
Administrative Law Judge
Office of Administrative Hearings