

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DRY CREEK JOINT ELEMENTARY
SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2011090491

ORDER GRANTING REQUEST FOR
CONTINUANCE AND SETTING DUE
PROCESS HEARING

On April 27, 2012, Student filed a request with the Office of Administrative Hearings (OAH) to continue the dates in this matter based upon a death in Student's family and need for Mother to attend the funeral, tentatively scheduled for May 7, 2012. Additional grounds for a continuance were that the Dry Creek Joint Elementary School District (District) had failed to comply with prior OAH orders and that Student disenrolled from the District. The matter is presently set for hearing on May 7 through 11, 2012. On May 1, 2012, the District submitted an opposition to the request asserting that OAH's February 24, 2012 Order Granting Motion for Reconsideration, which set the present dates for hearing, stated that OAH would not grant any further continuances and that Student failed to establish good cause for a continuance.

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:

Granted. All dates are vacated. Student only established good cause for a continuance based on the death in the family, despite the failure to submit a declaration or evidence that Student's Mother would be traveling to Tennessee. Student did not establish good cause for a continuance for any of the other reasons sought in the request for a continuance. Accordingly, while Student's request for a continuance is granted, Student's Parents are ordered to submit by 5:00 p.m. on May 21, 2012, a declaration under penalty of perjury that Student's Parent(s) attended the funeral and a copy of any documents that establish attendance. Failure to establish proof of attendance may subject Student and/or Parents to sanctions, pursuant to Code of Regulations, title 1, section 1040. District's complaint was filed in September 2012, and there have been numerous continuances. **NO FURTHER CONTINUANCES WILL BE GRANTED.**

Due Process Hearing: August 13, 2012, at 1:30 PM
 August 14 – 17, 2012, at 9:30 AM

IT IS SO ORDERED.

Dated: May 2, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings