

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012030702

ORDER DENYING REQUEST FOR
CONTINUANCE

The PHC in this matter has been held and hearing is scheduled to begin May 22, 2012. On May 15, 2012, Student's attorney filed a "Notice of Counsel's Unavailability for Hearing," citing as the sole reason a conflict with her representation of a different student in a different school district in OAH case numbers 2012031285 and 2012010154, which was also set to begin hearing on May 22, 2012. On May 18, 2012, Student's attorney filed a "Motion for Order Continuing the Hearing," which again cited a conflict with her representation of a different student in a different school district in OAH case numbers 2012031285 and 2012010154 as the sole grounds for the continuance. The May 18, 2012 continuance motion also recited that District and Student could not agree to other mutually available dates, and that Student's counsel had a busy calendar and upcoming vacation plans. The May 18, 2012 continuance motion was filed on a Friday, when there were less than three business days in which District could file an opposition under OAH procedures. OAH has already arranged for the hearing interpretation services requested by Student's counsel.

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. Student's counsel had filed a request for a continuance in OAH case numbers 2012031285 and 2012010154, which has been granted as of May 21, 2012. Accordingly, the sole reason given for the motion to continue the hearing in this matter no longer exists. Student's attorney no longer has a conflict with the other OAH matter that was set to begin hearing on May 22, 2012. Given the representations by Student's counsel in this and other OAH matters that she has limited availability in the future, this matter must proceed as scheduled given Student's counsel's established availability on May 22, 2012.

The hearing shall begin on May 22, 2012, and proceed as scheduled.

IT IS SO ORDERED.

Dated: May 21, 2012

/s/

RICHARD T. BREEN
Presiding Administrative Law Judge
Office of Administrative Hearings