

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ANTELOPE VALLEY UNION HIGH
SCHOOL DISTRICT.

OAH CASE NO. 2012080375

ORDER DENYING DISTRICT'S
REQUEST FOR CONTINUANCE

On October 8, 2012, District filed a request for a continuance. Although the request mentions various issues with witness and counsel availability that were not discussed at the PHC, the request ultimately seeks that the hearing go dark on October 10-11, 2012 and does not seek a continuance of the October 9, 2012 start date. Student opposed the continuance on various grounds, including that witnesses were actually available and/or that the continuance request is not timely.

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. All dates remain on calendar and the hearing will proceed as scheduled.

District is not seeking to continue the first day of hearing. To the extent there may be problems with witness or attorney availability that were not known at the time of the PHC, witness scheduling and further hearing date scheduling are within the discretion of the

hearing ALJ. Specifically, the need for additional hearing dates and/or District's request to go dark certain days of the hearing can be addressed on the record on the first day of hearing. Accordingly, the request is denied without prejudice to District renewing its requests on the record when the hearing commences on October 9, 2012.

IT IS SO ORDERED.

Dated: October 08, 2012

/s/

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