

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

HEMET UNIFIED SCHOOL DISTRICT,

OAH CASE NO. 2012090499

v.

PARENT ON BEHALF OF STUDENT,

HEMET UNIFIED SCHOOL DISTRICT,

OAH CASE NO. 2012110300

v.

PARENT ON BEHALF OF STUDENT.

ORDER DENYING STUDENT'S
REQUEST FOR CONTINUANCE

On November 19, 2012 (received after business hours on November 16, 2012), Student filed a motion to continue the due process hearing in the above consolidated matters. The reason given was that Student's attorney, Ralph Lewis, was requesting more time to prepare for hearing. On November 19, 2012, District filed an opposition on the ground that there was adequate time for hearing preparation given the December hearing dates and that Student had requested a continuance on October 3, 2012, specifically so that attorney Ralph Lewis, who had a health problem at the time, could represent the family at hearing.

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. Student has not shown good cause for a continuance. Based on the prior continuance request submitted October 3, 2012, Parents and attorney Ralph Lewis were aware of this hearing and that it was being continued specifically so that attorney Lewis could represent Student. More importantly, there has been no showing that additional time is needed. As of the date of the motion, the prehearing conference was scheduled for December 3, 2012 and the hearing was scheduled to begin December 12, 2012. The consolidated, District-filed matters put the burden of proof on the District, not Student. As of the date of this Order, Attorney Lewis has weeks to prepare for a hearing he knew about when retained, such that good cause has not been demonstrated. The request is denied. All prehearing conference and hearing dates are confirmed and shall proceed as calendared.

IT IS SO ORDERED.

Dated: November 20, 2012

/s/

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