

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MORGAN HILL UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2013071077

ORDER DENYING REQUEST FOR  
CONTINUANCE

On August 5, 2013, the parties file a request to continue the dates in this matter. There have been no prior continuances and the parties are requesting a one week continuance of the due process hearing dates. However, this is an expedited due process hearing and, as discussed below, the Office of Administrative Hearings (OAH) cannot grant a continuance in this matter.

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).)

A parent of a child with a disability who disagrees with any decision by a school district regarding a change in educational placement of the child based upon a violation of a code of student conduct, or who disagrees with a manifestation determination conducted by the district, may request and is entitled to receive an expedited due process hearing. (34 C.F.R. § 300.532(a)(2006).) The procedural right that affords the parties an expedited due process hearing is mandatory and does not allow OAH to make exceptions. (34 C.F.R.

§ 300.532(c)(2).) In such event, “(T)he [state education agency] SEA or [local education agency] LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed.” (34 C.F.R. § 300.532(c)(2) (2006).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

Denied. All prehearing conference and hearing dates are confirmed and shall proceed as calendared. OAH would be inclined to grant the request were this matter not an expedited hearing, or if the parties’ request maintained the commencement date of the hearing to within 20 school days of the filing of the complaint. The parties’ request would place the matter outside of the mandatory time line to commence the hearing. Accordingly, the request is denied.

IT IS SO ORDERED.

Dated: August 6, 2013

/s/  
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BOB N. VARMA  
Presiding Administrative Law Judge  
Office of Administrative Hearings