BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: ELK GROVE UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2015010203 ORDER DENYING REQUEST FOR CONTINUANCE OF PREHEARING CONFERENCE

On February 11, 2015, Guy Leemhuis, Student's attorney of record, filed a request to continue the dates in this matter due, in part, to the unavailability of James Peters, III, who is described in the moving papers as Student's representative.[1]

A due process hearing must be conducted and a decision rendered within 45 days of receiving the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); and Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) As a result, continuances are disfavored. Good cause may include a party, counsel, or an essential witness's unavailability due to death, illness or other excusable circumstances; an attorney's substitution in the interest 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 a case such that it is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the hearing date's proximity to the request; 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:

[1] Student asserts that he intends to file a motion to consolidate this matter with a related case. No motion to consolidate is currently pending and will not be ruled on at this time. The parties should, however, be prepared to discuss consolidation during the PHC.

☒ Denied. Mr. Peters' declaration indicated he is not available to participate in the PHC scheduled for Friday, February 13, 2015, due to an injury he sustained earlier this week. Mr. Leemhuis is the attorney of record in this case. The motion to continue and supporting declaration do not address his availability to participate in the PHC. The motion indicates only that Mr. Peters is knowledgeable about the facts of this case and unavailable. While that may be true, that does not constitute good cause to continue the PHC as it is expected that the attorney of record in a case is able to represent his client in all matters related to the case. Accordingly, the motion to continue the PHC is denied and it will proceed as scheduled. This order does not preclude Mr. Leemhuis from renewing his motion to continue the hearing dates in this case during the PHC if desired.

IT IS SO ORDERED.

DATE: February 11, 2015

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings