

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

v.

LEMON GROVE ELEMENTARY SCHOOL
DISTRICT,

OAH Case No. 2015050337

LEMON GROVE ELEMENTARY SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH Case No. 2015090042

ORDER GRANTING DISTRICT'S
MOTION TO GO DARK ON OCTOBER
21, 22, AND 28, 2015, AND SETTING
ADDITIONAL HEARING DATES

On September 1, 2015, Student and the Lemon Grove Elementary School District filed a joint motion to consolidate the above-captioned cases. The parties also jointly moved for a continuance if OAH granted their motion to consolidate. The parties requested non-consecutive hearing dates in their motion to continue. The parties did not give any reason for requesting the non-consecutive dates.

On September 2, 2015, OAH granted the parties' motion to consolidate and partially granted their motion to continue, setting the hearing on consecutive dates beginning October 19, 2015, based on the parties' failure to support the request for non-consecutive dates. OAH informed the parties that they could re-new their request for non-consecutive hearing dates and provide information supporting their request.

On September 17, 2015, District filed a motion to continue the hearing. The motion asks that OAH schedule the original non-consecutive hearing dates requested by the parties in their September 1, 2015 motion to continue. District's motion is supported by a declaration of its attorney that she and District's special education director have a prior commitment to attend a conference in another city on October 21 through 23, 2015. The declaration further states that District's counsel has a prior commitment to be a presenter at

another out-of-town conference on October 28, 2015. District therefore moves that OAH schedule the hearing on the dates originally requested by the parties in their September 1, 2015 joint motion to continue.

Student filed an opposition to District's motion on September 21, 2015. Student contends that a continuance will prejudice him as his attorney has been actively preparing for hearing based on the dates scheduled by OAH in its September 2, 2015 Order.

It is unclear exactly why Student contends he will be prejudiced. District is not, in fact, requesting that the hearing be continued. District requests that the first day of hearing remain on October 19, 2015, and that the hearing be scheduled additionally on October 20, 26, 27, and 29, 2015. These are the exact days that Student originally agreed to in the parties' joint request for continuance. District is, in effect, requesting that the hearing go dark on three days to accommodate the prior commitments of its counsel and special education director. The days District requests that no hearing be held are dates to which Student originally agreed. The days District requests be added as hearing days are also dates to which Student originally agreed.

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).)

Here, District has given good cause for its request that the hearing go dark on October 21, 22, and 28, 2015, and that additional hearing days be added on October 26, 27, and 20, 2015.¹ District's attorney and special education director have commitments that were made prior to the original request for additional, non-consecutive hearing dates.

¹ In the future, the parties should provide good cause for requests for non-consecutive hearing dates in their original motion to continue.

District's request is therefore granted. The hearing shall now take place as follows:

Prehearing conference: October 9, 2015, at 10:00 a.m.

Due Process Hearing: October 19, 20, 26, 27, and 29, 2015, starting at 1:30 p.m. on October 19 and 26, 2015, and at 9:00 a.m. all other days, unless otherwise ordered.

IT IS SO ORDERED.

DATE: September 21, 2015

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings