

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MONROVIA UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015100654

ORDER DENYING REQUEST FOR
CONTINUANCE WITHOUT
PREJUDICE

On November 16, 2015, District's attorney filed a request to continue the dates in this matter with the Office of Administrative Hearings, based upon her unavailability for hearing on the initially scheduled date of December 15, 2015. District seeks dates in early March 2016. On November 18, 2015, Student filed an opposition to the motion requesting that the motion be denied for lack of good cause. For the reasons discussed below, District's motion is denied without prejudice.

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).)

District filed a motion supported by two declarations under penalty of perjury. One declaration was from District's counsel, and the other from her assistant, which corroborated dates on counsel's calendar. In his opposition to the motion, Student's counsel pointed out numerous inconsistencies and mistakes in District's motion and supporting declarations. Notably, District's counsel asserts in her declaration that she represents a different school district than the responding district in this case. While that, among other mistakes in the

motion, is likely an unintentional but careless oversight, it is part of a declaration made and signed by counsel under penalty of perjury, which casts doubt on the accuracy of the remainder of her declaration. For example, District's counsel identifies in her declaration the hearing date in the instant case as one of her "conflicting" dates, erroneously asserting that the hearing is currently scheduled for December 15, 16, and 17, 2015. Her assertion contradicts her argument that she is unavailable for hearing in this matter as currently set. She lists numerous other matters before OAH scheduled for hearing after this case, none of which have actually started hearing so as to give rise to an actual conflict with the December 15, 2015 hearing date. Although, counsel states that she has a prepaid vacation planned for January 25-20, 2016, she does not explain why she cannot be available for hearing in February 2016, before her proposed dates in early March 2016.

Student is entitled to proceed to hearing in a timely manner and opposes a continuance to March 2016. Notwithstanding its factual inconsistencies, District's motion does not establish a credible basis of good cause for a continuance of the December 15, 2015 hearing date. Anticipated conflicts in scheduling with hearing dates in other OAH matters that have not yet begun are not a basis for good cause.

District's motion is denied without prejudice. OAH is inclined to grant a first continuance of the matter upon a showing of good cause, a credible showing of good faith efforts to obtain mutually agreeable dates, and a reasonable proposal for new dates. If the parties are unable to agree on hearing dates, they may request OAH to select dates.

All dates are confirmed.

IT IS SO ORDERED.

DATE: November 19, 2015

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings