

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL  
DISTRICT.

OAH Case No. 2015100751

ORDER DENYING REQUEST FOR  
CONTINUANCE

On April 12, 2016, Student filed a request to continue the dates in this matter. This matter was originally filed on October 20, 2015. The parties made a joint first request for continuance on November 20, 2015, which was granted. Then, on February 17, 2016, Student requested a continuance, which was opposed by Mt. Diablo Unified School District, because his counsel was scheduled to be in an expedited hearing and because Student has recently scheduled an independent educational assessment. On February 22, 2016, the motion was granted however, good cause was found only for the unavailability of counsel. The matter was continued for about a week. On February 23, 2016, Student filed an amended complaint, and Mt. Diablo did not oppose the amendment. Therefore, the request was granted. This reset the hearing dates in the matter again. The matter is currently scheduled to begin on April 26, 2016, more than six months after the case was filed.

Now, more than 6 weeks after the amended complaint was filed and the dates reset, Student asks for a continuance because a witness will be unavailable on April 27 and 28, 2016, due to an out of town vacation. Student also requests the continuance because he would like the hearing delayed until after completion of the independent assessment, which Student claims will be on an unspecified date in May 2016. Student's counsel then listed a variety of dates where she is set for hearing in other cases before the Office of Administrative hearings, none of which were filed earlier than this case. On April 13, 2016, Mt. Diablo opposed the request for continuance.

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. The request is:

Denied. All prehearing conference and hearing dates are confirmed and shall proceed as calendared. This matter has been pending since October of 2015. Student should have been prepared to move forward to hearing when the case was filed. The witness will be available the first day of hearing, so no good cause is present for witness unavailability. No good cause has been shown for unavailability of counsel during the currently scheduled hearing dates. Finally, Student's decision to undertake an independent assessment months after filing the case does not constitute good cause for delaying the hearing until the completion of such assessment.

IT IS SO ORDERED.

DATE: April 13, 2016

DocuSigned by:  
*Margaret Broussard*  
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MARGARET BROUSSARD  
Presiding Administrative Law Judge  
Office of Administrative Hearings