

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TEHACHAPI UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015120968

ORDER GRANTING DISTRICT'S
MOTION FOR CONTINUANCE AND
SETTING PREHEARING
CONFERENCE AND HEARING

On March 29, 2016, Tehachapi Unified School District filed a request to continue the prehearing conference and hearing in this matter with the Office of Administrative Hearings, based upon the medical leave of its trial counsel. Student opposed the motion. On March 29, 2016, OAH denied the motion, without prejudice, because District had not contacted Student's attorney in an attempt to reach an agreement regarding the requested continuance.

On April 7, 2016, District renewed its motion to dismiss, supported by declarations and exhibits, demonstrating that it attempted to contact Student's counsel and agree upon continued dates. On April 8, 2016, Student filed his opposition.

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's Motion seeks a continuance of the hearing dates due to the unavailability of District's trial counsel, Kathleen LaMay, who was placed on medical leave beginning Monday, March 21, 2016; she is not expected to return to work until the latter part of April. Since the filing of District's initial motion to continue herein, OAH has continued another of

Ms. LeMay's hearings to mid May 2016. Therefore, District requests a continuance of the hearing in this matter to May 31, 2016.

Student's opposition is not supported by declaration or exhibit. Most of the opposition reviews the law and motion history associated with District's motion to dismiss, which OAH denied. The opposition does not demonstrate how Student might be prejudiced by a short continuance. Even if the hearing proceeded as presently scheduled, a decision would likely not be issued before the end of the regular school year. Accordingly, District has demonstrated good cause.

All dates are vacated and the matter is set as follows:

Prehearing Conference: May 23, 2016 at 1:00 PM.

Due Process Hearing: May 31, June 1, 2, and 7, 2016, at 1:30 PM the first day, and 9:00 AM each hearing day thereafter, continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. The hearing shall take place at District offices, 300 South Robinson Street, Tehachapi, CA 93561.

Any further continuance is unlikely, absent a showing of substantial good cause.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

IT IS SO ORDERED.

DATE: April 11, 2016

DocuSigned by:



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CLIFFORD H. WOOSLEY

Administrative Law Judge

Office of Administrative Hearings