

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN MARCOS UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2016040286

ORDER DENYING DISTRICT'S
REQUEST FOR CONTINUANCE

On May 10, 2016, San Marcos Unified School District filed a request to continue the dates in this matter with the Office of Administrative Hearings to dates approximately 90 days from the initial dates scheduled. District based its request on the unavailability of District's attorney due to two planned vacations over the next few months, one of which overlaps the first day of hearing, and that attorney's very busy hearing calendar through the end of District's school year on June 21, 2016. The declaration of counsel indicates that school personnel will be unavailable to testify during the school recess from June 21 through August 22, 2016.

On May 12, 2016, Student filed opposition to the continuance as prejudicial to Student, because Student's current placement is not allegedly appropriate or safe. Student submitted a copy of a recent email from parent to school employees documenting a recent pushing, name calling and spitting incidents during which Student contends he was punched by another student. Alternatively, Student requests that the hearing be scheduled for July 12, 2016.

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.

District has not established good cause for a continuance. The declaration of District's preferred attorney does not show that all attorneys in the law firm representing District, let alone District's preferred attorney, are unavailable for 90 days due to death, illness or other excusable circumstances. District's preference for an unavailable attorney over an available attorney is not an excusable circumstance for purposes of establishing good cause for a continuance. Similarly, a continuance because counsel is assigned to handle another hearing, which may not go forward and may be reassigned to other counsel, is premature. District also failed to discuss and confer regarding new hearing dates as required by OAH. Forms are available on the OAH website that explain the procedure.

IT IS SO ORDERED.

DATE: May 13, 2016

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ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings