

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MONTEBELLO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012040324

ORDER GRANTING REQUEST FOR
CONTINUANCE AND SETTING
MED/PHC/HRG

On April 24, 2012, the parties filed a stipulated first request for a continuance. The parties asked for a date in excess of 90 days because of the claimed unavailability of District personnel in July and August.

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 Granted. All dates are vacated. However, the continuance is not being granted on the ground of unavailability of District personnel due to summer break. Nothing in the IDEA contemplates that due process hearings cannot be held over the summer. Moreover, no specifics were given as to why District witnesses could not be subpoenaed to compel their attendance in July or August. The continuance was granted because the dates are reasonably close to the initial 90 day continuance contemplated by OAH procedures. This matter will be set as follows:

Mediation: July 5, 2012 at 9:30 AM
Prehearing Conference: September 10, 2012 at 1:30 PM [NOTE TIME
CHANGE.]
Due Process Hearing: September 17-20, 2012 at 1:30 PM the first day,
9:00 AM after.

IT IS SO ORDERED.

Dated: April 26, 2012

/s/

RICHARD T. BREEN
Presiding Administrative Law Judge
Office of Administrative Hearings