

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TEHACHAPI UNIFIED SCHOOL  
DISTRICT AND KERN COUNTY SELPA.

OAH CASE NO. 2012040336

ORDER DENYING REQUEST FOR  
CONTINUANCE

On August 20, 2012, Student filed a request for continuance on the grounds that counsel for Student had been unable to communicate with Mother for two months and that Parents required time to obtain new counsel. On August 21, 2012, the Tehachapi Unified School District (District) filed an opposition. On August 21, 2012, Student filed a response.

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).) The Office of Administrative Hearings (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. Based upon the pleadings filed by Student, it is clear that

counsel has spoken to Father and Mother. Counsel asserts that she did not ascertain from Mother who holds the educational rights because Mother was en route to a hospital. However, counsel fails to establish whether she clarified with Father what the changed structure was in the family, who held the educational rights and whether either Parent wished to continue with the litigation. Counsel admits that Father told her there was a change in “structure” to the family however, counsel fails to disclose what that change is and how counsel believes it affects her representation. Additionally, a conflicting declaration from District’s counsel asserts that Mother was in receipt of and reviewing a settlement proposal. Finally, while Student’s counsel seeks time for Parents to find alternate representation, she has not officially withdrawn from representation in this matter. Based upon all of the facts and circumstances set forth in the pleadings, Student has failed to establish good cause for a continuance.

Both Student and District assert that they have not received the other party’s evidence packet in this matter. Issues relating to the timely service of documentary evidence may be resolved at the hearing. Student’s request for a continuance is denied.

IT IS SO ORDERED.

Dated: August 24, 2012

/s/

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BOB N. VARMA  
Presiding Administrative Law Judge  
Office of Administrative Hearings