

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PALMDALE SCHOOL DISTRICT.

OAH CASE NO. 2012051191

ORDER GRANTING REQUEST FOR
CONTINUANCE AND SETTING
PHC/HRG

On July 17, 2012, after the PHC had been conducted, Student's counsel filed a request for a continuance on the ground that neither Student's parent, nor an important witness for Student, was available. Contrary to OAH policy, Student's counsel had not contacted District to attempt to agree upon dates. On July 18, 2012, District filed a notice of non-opposition, but District also failed to mention agreeable hearing dates. OAH denied the motion with instructions for the parties to agree to dates. The parties jointly filed a request to continue on July 23, 2012, that included proposed dates.

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. Further continuances are not contemplated. OAH construes the request for continuance as a representation that both Student's expert witness and Student's parent are available on the dates selected. OAH has added a continued PHC date, given the length of the continuance. The parties do not need to file additional PHC statements unless there are changes to the witnesses, documents, or issues in this matter. This matter will be set as follows:

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| Mediation: | N/A |
| Prehearing Conference: | September 26, 2012 at 1:30 PM |
| Due Process Hearing: | October 2-4, 8-10, 2012 at 9:00 AM |

IT IS SO ORDERED.

Dated: July 23, 2012

/s/

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