

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ALHAMBRA SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012070307

ORDER GRANTING REQUEST FOR
CONTINUANCE AND SETTING
PREHEARING CONFERENCE AND
HEARING DATES

On August 20, 2012, Parent and Student (collectively, Student), filed a request to continue the prehearing conference (PHC) and due process hearing (DPH) dates in this matter, based upon the inability of her expert witness, Steve Miller, to review documents, to observe the proposed educational placement for Student, and to prepare to testify in this matter by the time of the currently scheduled hearing dates of September 11-13 and September 18-19, 2012. Additionally, Mr. Miller is unavailable to testify on those dates. On August 22, 2012, the Alhambra School District (District) opposed the motion, on the grounds that Student has not been diligent. District also contends that the matter has been previously continued to the September dates listed above, to which Student agreed without mentioning the possibility that her expert would not be prepared or available on the agreed-upon dates. On August 22, 2012, Student filed a reply in support of the request for continuance.

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 evidence reflects that Student has not been diligent, and has attempted to

delay this matter, by attempting to obfuscate the identity of her counsel, by her counsel's failure to respond to District's inquiries for agreeable continuance dates regarding the first continuance, and by her counsel's agreeing to continuance dates which he knew, or should have known, would not conform with Student's expert's busy schedule. Nevertheless, Student's expert is entitled to observe the proposed placement while school is in session to prepare for his testimony, and school did not start until August 21, 2012. Furthermore, Student requests only a brief continuance. Therefore good cause exists to support the request for continuance. The request is:

Granted. The PHC and DPH dates are vacated. This matter will be set as follows:

Prehearing Conference: October 1, 2012, at 1:30 p.m.

Due Process Hearing: October 9-11, and October 15-16, 2012, at 9:30 a.m., and continuing day to day, Monday through Thursday, as needed, at the discretion of the Administrative Law Judge.

IT IS SO ORDERED.

Dated: August 23, 2012

/s/

ELSA H. JONES
Acting Presiding Administrative Law Judge
Office of Administrative Hearings