

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

THE LEARNING CHOICE ACADEMY.

OAH CASE NO. 2012110751

ORDER DENYING MOTION TO
VACATE DATES OR CONTINUE
HEARING, WITHOUT PREJUDICE

On December 13, 2012, Student filed a motion (Motion) to vacate dates in this matter or to continue the hearing, until “the district provides final compensation per settlement agreement dated December 11, 2012.”¹ The Motion states that the parties stipulated to it, but, except for Student’s counsel, no other party signed the Motion, and no stipulation was attached to the Motion. The Motion does not contain any specific dates to which any party wishes the matter to be continued, and misstates or does not include some of the dates that OAH has already scheduled. OAH has received no opposition to the Motion.

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).)

¹The Motion does not identify the “district” mentioned therein. However, in the due process hearing request, the Student defines the El Dorado County SELPA (SELPA) as the “district.” Presumably, therefore, the SELPA is the “district” to which the Motion refers. If this presumption is incorrect, then that is due to a defect in the Motion.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

DENIED, without prejudice. All prehearing conference and due process hearing dates are confirmed and shall proceed as calendared.²

The Motion provides no facts showing good cause to support the Student's request. Assuming that the "district" referred to in the Motion is the SELPA, as discussed above, Student formally and completely dismissed the SELPA from the action on or about December 10, 2012, and specifically directed, in the request for dismissal, that all hearing dates should remain unchanged. The dismissal leaves The Learning Choice Academy as the remaining respondent. The Motion presents no reason why Student's settlement with the SELPA, or any other circumstance, should affect the scheduled prehearing conference and hearing dates as the matter proceeds against The Learning Choice Academy. The Motion presents no reason why the matter should not proceed as scheduled.

Furthermore, it is the policy of OAH that prehearing conference and hearing dates are not "postponed" or continued, even when good cause supports such a continuance, unless the parties have demonstrated that they have first met, conferred and, if possible, agreed to specific continuance dates that conform to OAH's long-standing scheduling practices. If the parties cannot agree, then the parties can request that OAH select the continuance dates. The Motion does not reflect that Student has followed any aspect of this procedure.

IT IS SO ORDERED.

Dated: December 21, 2012

/s/

ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings

² Note that if any party does not wish to proceed with the mediation that is currently scheduled for January 2, 2013, which is a voluntary proceeding, the party should call OAH staff forthwith to cancel or reschedule the mediation.