

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CASTRO VALLEY UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015010039

ORDER DENYING REQUEST FOR
CONTINUANCE

On January 22, 2015, Parent, on behalf of Student, filed a request to continue the prehearing conference and due process hearing dates in this matter. There is no indication that Student's request was served upon the Castro Valley Unified School District. Furthermore, there is no indication that Student is requesting to either continue or cancel the currently scheduled February 4, 2015 mediation.

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 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. OAH requires all motions filed with OAH be served upon the other party. Here Student's request to continue dates is a motion and should be served upon Castro Valley. "Service" means sending the document to the other party at the same time as it is sent to OAH.

Student is ordered to serve the request for continuance upon Castro Valley and provide some proof to OAH that the request was served. After service, the parties may agree that they both want a continuance, in which case, the parties can submit a joint request for continuance. If a joint request is filed, OAH will consider and rule upon it. If the parties cannot agree, then OAH will consider and rule upon Student's request as a contested motion. Furthermore, the parties have not confirmed the February 4, 2015 mediation. Accordingly, Student's request to continue is denied without prejudice and may be resubmitted after Student has served Castro Valley. All mediation, prehearing conference and hearing dates are confirmed and shall proceed as calendared.¹

IT IS SO ORDERED.

DATE: January 29, 2015

/s/

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

¹ While the date for mediation on February 4, 2015, remains on the calendar, mediation is voluntary. Either party may cancel mediation with written notice to OAH.