

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ELK GROVE UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015010203

ORDER DENYING REQUEST FOR
CONTINUANCE

On February 23, 2015, Student filed a request to continue the hearing dates in this matter, which is scheduled to commence on February 26, 2015. Elk Grove Unified School District did not respond. The Office of Administrative Hearings typically provides three days for a response prior to ruling on a motion; however, to do so here would conflict with the start of the previously scheduled hearing.

Student's motion to continue is based on the unavailability of his advocate, James Peters, III, and attorney, Guy Leemhuis. Mr. Peters submitted a signed declaration under penalty of perjury and a physician's note dated February 22, 2015, indicting he is restricted from working for 10 days. In Mr. Peters' declaration he states that, "Mr. Leemhuis is in Court in southern California on Thursday February 26th and is not able to fly up to Sacramento and represent the client on Friday morning, on the 27th."

A due process hearing must be conducted and a decision rendered within 45 days of receiving the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); and Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) As a result, continuances are disfavored. Good cause may include a party, counsel, or an essential witness's unavailability due to death, illness or other excusable circumstances; an attorney's substitution in the interest 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 a case such that it is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the hearing date's proximity to the request; 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).)

Denied. Good cause has not been established for a continuance. Although, Mr. Peters established that he is not able to attend the hearing because he is recovering from an injury, Mr. Peters is not the attorney of record in this case. Mr. Leemhuis is the attorney of record and he has not established good cause for a continuance. Mr. Leemhuis did not submit a declaration explaining his unavailability. There is merely a passing reference in Mr. Peters' declaration indicating that Mr. Leemhuis will be in court in southern California on February 26. No details are provided regarding the other matter such as when it was filed or when the appearance was scheduled. More importantly, Mr. Leemhuis participated in the telephonic prehearing conference on Friday, February 13, 2015, and, at no time, indicated that he was scheduled to be in court on another matter on February 26, 2015 or that he was unavailable during the scheduled hearing dates, which were discussed extensively during the prehearing conference.

Two prior continuances in this case have been granted over Elk Grove's objection. Good cause has not been established to grant a third continuance. All hearing dates and timelines shall proceed as calendared.

IT IS SO ORDERED.

DATE: February 24, 2015

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings