

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

KERN COUNTY SUPERINTENDENT OF
SCHOOLS.

OAH Case No. 2015100716

ORDER DENYING REQUEST FOR
CONTINUANCE

On November 13, 2015, District filed a request to continue the dates in this matter with the Office of Administrative Hearings, on the grounds District's counsel had conflicting dates calendared in upcoming OAH matters. District made a good faith effort to obtain agreed dates from Student, but the parties have not agreed upon 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 denied. The possibility that counsel will be involved in other OAH matters at future dates is not good cause for a continuance. Should counsel become unavailable due to an actual calendar conflict, the parties may request a continuance based upon the unavailability of counsel.

Here, if the parties agree upon dates for a first continuance OAH would be inclined to grant a first continuance. The parties may re-submit the request to continue after they have agreed upon hearing dates. If the parties are unable to agree on hearing dates and both parties request a continuance, they may request OAH to select dates.

All dates and timelines shall proceed as calendared.

IT IS SO ORDERED.

DATE: November 20, 2015

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings