

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SAN JOSE UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2011120554

ORDER DENYING REQUEST FOR
CONTINUANCE

On July 5, 2012, San Jose Unified School District (District) filed a request to continue the dates in this matter, based upon the possible unavailability of one witness and inability to contact another witness who had previously indicated her availability to testify at hearing, presently scheduled for July 16 through 19, 2012. The two witnesses are the persons who assessed Student and whose assessment is at issue in the District's hearing request. On July 6, 2012, Student opposed the request, asserting that the District had not established the unavailability of the two witnesses, and that the District had agreed upon continued dates on May 1, 2012.

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 (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. All hearing dates are confirmed and shall proceed as calendared. The District agreed upon the presently scheduled dates in the May 1, 2012 joint continuance request. At the July 2, 2012 Prehearing Conference, the District confirmed its availability for hearing and witness availability for the scheduled hearing dates. The District's motion for a continuance does not explain why the District did not ensure the availability of its two main witnesses before the end of the 2011-2012 school year, especially since the District filed its hearing request in December 2011 and OAH had previously granted four joint continuance requests. Accordingly, the District did not establish good cause for its continuance request.

IT IS SO ORDERED.

Dated: July 9, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings