

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PALMDALE SCHOOL DISTRICT.

OAH CASE NO. 2012051191

ORDER DENYING REQUEST FOR  
CONTINUANCE

On July 17, 2012, Student filed a motion to continue the hearing on the ground that Student's mother needed to care for her own mother and was unavailable for hearing. No end date was given for Student's Mother's unavailability. Student also stated, without any evidence or declaration, that an expert witness was unavailable, despite Student's counsel not mentioning this at the PHC the day before. Contrary to OAH scheduling practices, Student did not include suggested dates, did not indicate they had contacted District. Instead, Student asked for a trial setting conference. On July 18, 2012, District filed a statement of non-opposition, which stated that the parties would submit a stipulated continuance with mutually agreed 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. All hearing dates and timelines shall proceed as calendared. Here, Student requested a continuance of the hearing dates, and OAH is inclined to grant the continuance. However, Student's counsel did not raise this issue at the PHC, despite having an opportunity to do so, and then did not even call District prior to filing for a continuance. As noted in District's non-opposition, OAH expects parties to attempt to agree to dates, and does not set TSC's under these circumstances, where there was no showing that Student even tried to get agreement from District. The parties may re-submit the request to continue after they have agreed upon hearing dates within OAH scheduling guidelines. If the parties are unable to agree on hearing dates, they may affirmatively request OAH to select dates, however, the parties will be bound by the dates OAH selects. The stipulated request must be received by OAH no later than noon on July 23, 2012.

IT IS SO ORDERED.

Dated: July 19, 2012

/s/

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RICHARD T. BREEN  
Presiding Administrative Law Judge  
Office of Administrative Hearings