

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

DOWNEY UNIFIED SCHOOL DISTRICT
& CALIFORNIA CHILDREN'S
SERVICES.

OAH CASE NO. 2014080021

ORDER DENYING REQUEST FOR
CONTINUANCE

On September 30, 2014, Student filed a request to continue the prehearing conference and hearing dates. The reason given was that Student and his parent are leaving the country for unexplained reasons for approximately three weeks during October, such that Student's attorney contends more time is needed to consult them prior to hearing. The request did not contain any explanation about whether Student's counsel attempted to confer with the attorneys for California Children's Services regarding mutually agreeable 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 without prejudice to refiling. Student and parent's trip does not conflict with the current hearing date. No explanation was given for the purpose of the trip (especially when parent and attorney were aware of the hearing dates), why parent cannot be consulted by phone, or why any necessary consultation with Student and parent was not done prior to their departure or cannot be done in the days before hearing upon their return. Finally, Student's counsel should have attempted to contact opposing counsel to attempt to obtain agreement to hearing dates prior to making the request. All prehearing conference and hearing dates are confirmed and shall proceed as calendared.

IT IS SO ORDERED.

DATE: October 06, 2014

/s/

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