

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BERKELEY UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015120931

ORDER DENYING REQUEST FOR
CONTINUANCE

On March 11, 2016, Parent, on behalf of Student, filed a request to continue the dates in this matter. The request was received after business hours and is deemed filed on March 14, 2016. On March 14, 2016, the Berkeley Unified School District filed an opposition to Student's request for a continuance.

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 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).)

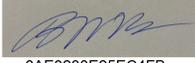
OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

Denied. Student requests that OAH continue the dates in this matter on the grounds that Student is submitting a settlement agreement between the parties to the Department

of Education to determine its validity and enforceability.¹ Berkeley opposes the request for continuance on the grounds that a compliance complaint with CDE may not be used to delay a due process hearing under the Individuals with Disabilities Education Act.² When a compliance complaint is filed involving issues also raised in a due process hearing request, the compliance complaint procedures are subordinate to the proceedings before OAH. (34 C.F.R. § 300.152(c)(1).) Accordingly, the request to continue is denied, all prehearing conference and hearing dates are confirmed, and shall proceed as calendared.

IT IS SO ORDERED.

DATE: March 14, 2016

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BOB N. VARMA
Division Presiding Administrative Law Judge
Office of Administrative Hearings

¹ The request for continuance also contained a request for accommodations under the Americans with Disabilities Act. Those requests are being forwarded to OAH's ADA Coordinator and will be addressed separately.

² The opposition also raises arguments as to whether OAH has jurisdiction over certain issues in the case. These arguments have already been raised by Berkeley in a separate request to dismiss, and shall be addressed under a separate order.