

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

POWAY UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH Case No. 2016030138

ORDER GRANTING IN PART
REQUEST FOR CONTINUANCE AND
DENYING REQUEST FOR CHANGE
OF VENUE

On March 7, 2016, Parents, on behalf of Student filed a request to continue the dates in this matter with the Office of Administrative Hearings, which requested hearing dates to late June or early July 2016, to obtain legal representation and due to Parents' work schedule. Student also requested a change of venue for the hearing from Poway Unified School District to the Office of Administrative Hearings, San Diego. On March 10, 2016, District opposed the request based upon Student failing to demonstrate the necessity of a continuance beyond 90 days, or why the hearing venue needs to be changed.

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).)

Education Code section 56505, subdivision (b), provides that a special education due process hearing "shall be held at a time and place reasonably convenient to the parent or guardian and the pupil."

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. As to Student's continuance request, the request is granted in part to permit Parents to obtain legal representation to represent Student. However, Student did not establish good cause for the hearing to be continued for more than 90 days. Therefore, this matter will be set as follows:

Prehearing Conference: May 16, 2016, at 10:00 AM
Due Process Hearing: May 24, 2016, at 9:30 AM, May 25, 2016, at 9:00 AM, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. Matter is assigned to Administrative Law Judge Darrell Lepkowsky,

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

As to Student's request to change the hearing venue from the District's offices to the Office of Administrative Hearings, San Diego office, Student did not provide any reason why the hearing location should be changed. Therefore, the motion to change venue is denied.

IT IS SO ORDERED.

DATE: March 11, 2016

DocuSigned by:
Peter Paul Castillo
F0BCD8A6A62C4E9...

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings