

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

RIVERSIDE UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2013060053

ORDER DENYING REQUEST FOR
CONTINUANCE

On July 23, 2013, the Riverside Unified School District (District) filed a request to continue the dates in this matter on various grounds. As discussed below, none of the various grounds constitute good cause for a continuance and the request is denied.

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 prehearing conference and hearing dates are confirmed and shall proceed as calendared. District asserts that a continuance is warranted because this is the first request for a continuance on its amended complaint; District should be given

an opportunity to participate in mediation; District staff is unavailable due to summer recess; and, District has a conflicting due process hearing pending in OAH Case No. 2013060982. District failed to establish good cause. First, while this is an initial request for continuance, the number of continuance requests considered for good cause are not based upon whether the complaint was amended, but rather on when the initial complaint was filed and how long the case has been pending. OAH will typically grant a first request for continuance if it is a joint request. A request by one party alone, must still establish good cause by providing a reason for the continuance that would stand as good cause on its own.

Second, while District desires an opportunity to participate in mediation, mediation is voluntary and there is no indication that Parents desire to participate in mediation. By District's own admission, it informed Parents that it was closed on July 25, 2013, the date OAH provided for mediation, and District unilaterally canceled mediation. According to the declaration of District's counsel, he sent a letter to Parents on July 14, 2013, asking them to consent to a continuance and agree to reschedule mediation on August 14, 2013. To date, Parents have not responded. Therefore, there is no agreement to mediate. Because mediation is voluntary and Parents have not consented, this does not constitute good cause.

Third, District contends that it cannot participate in a due process hearing because its employees are on vacation due to summer recess. This appears to be the primary grounds for District's conduct with respect to the calendaring of this matter. It canceled mediation because it was on summer recess. It asked Parents to reschedule mediation on a date convenient to District, following summer recess, and now it seeks a continuance due to summer recess. District filed this matter on May 30, 2013, and then moved to amend its complaint on June 14, 2013. District is experienced in due process proceedings and has appeared before OAH on numerous occasions. It should have known that a due process hearing filed on May 30, 2013, would likely be calendared for hearing during its summer recess. More importantly, the Individuals with Disabilities Education Act (IDEA) mandates a speedy resolution to due process filings and makes no exception for summer recesses of school districts. If summer recess constituted good cause, all special education litigation would come to a grinding halt across the country during the summer months and, this surely is not in keeping with the speedy resolution mandate of the IDEA.

Finally, District asserts that it has a conflicting due process hearing in OAH Case No. 2013060982, and therefore a continuance is warranted. This final ground for a continuance request is of most concern to OAH. District filed the request to continue the instant matter on the morning of July 23, 2013. OAH granted the continuance request in OAH Case No. 2013060982 on July 23, 2013, and served it upon District's counsel shortly after District filed this motion. However, as of the date of this Order, District has failed to supplement its request for continuance and inform OAH that OAH Case No. 2013060982 has been continued into September 2013 and no actual

conflict exists. It leaves OAH to ponder whether the omission was purposeful. Regardless, as no conflict exists, District's request to continue is denied.

District has failed to establish good cause for a continuance. The request to continue is denied.

IT IS SO ORDERED.

Dated: July 29, 2013

/s/

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