

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. EVEREST PUBLIC HIGH SCHOOL,	OAH CASE NO. 2013060939
EVEREST PUBLIC HIGH SCHOOL, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013070332 ORDER DENYING REQUEST FOR CONTINUANCE

On July 31, 2013, the Everest Public High School (District) filed a request to continue the dates in this matter on the grounds of unavailability of District staff and District counsel. On August 5, 2013, Student filed an opposition.

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 contends that it should be granted a continuance because this is the first request; its staff are unavailable due to summer recess; and its counsel has conflicting matters scheduled for days other than the first day of this due process hearing. Where parties jointly request a continuance and meet OAH's calendaring guidelines, OAH will generally grant an initial request for continuance. However, where a continuance request is opposed, the party seeking the continuance must establish good cause.

The Individuals with Disabilities Education Act (IDEA) requires a speedy resolution to due process hearing, subject to a continuance if good cause is established. The IDEA makes no mention of due process proceedings being suspended during the school districts' summer recess. Were this considered good cause, due process proceedings throughout the country would be suspended during the summer months. This is not in keeping with the speedy resolution mandate of the IDEA. Accordingly, District did not establish good cause for a continuance on the ground that its staff is unavailable due to summer recess.

Finally, District's counsel contends that she while she is available on August 14, 2013, the first day of the due process hearing, she has conflicts following the start of the hearing that require this matter to be continued. Unavailability of counsel may, in some circumstances, constitute good cause. However, here counsel has failed to provide any information from which OAH can determine the extent of the conflict. For example, no case numbers of the conflicting matters are provided, there is no indication of when they were filed, and no indication of whether they are mediation or due process hearings or appearances before other tribunals. Accordingly, District has failed to establish good cause for a continuance.

IT IS SO ORDERED.

Dated: August 5, 2013

/s/

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