

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

SAN DIEGUITO UNION HIGH SCHOOL  
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012041038

ORDER DENYING REQUEST FOR  
CONTINUANCE

On September 13, 2012, Parent, on behalf of Student, filed with the Office of Administrative Hearings (OAH) a request to continue the currently scheduled hearing dates in the case. On September 14, 2012, counsel for the San Dieguito Union High School District (District) filed with OAH an opposition to this request.

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. In this matter, the District has filed a Request for Due Process Hearing seeking a determination of whether individualized education programs (IEP) dated in September 2011, November 2011 and March 2012, offered Student a free appropriate public education in the least restrictive environment. Parent seeks a continuance of two months because the District has agreed to assess Student. The assessments will take about 60 days, and Parent contends that the assessment results will be relevant to the outcome of the case. However, it is well-established that, in weighing the appropriateness of

an IEP, a court or administrative tribunal must primarily consider facts that were known to the team at the time of the formation of the IEP under scrutiny. Under this standard, the assessments that the District will conduct of Student will have a limited bearing on whether the IEP's described in the District's complaint were appropriate. In addition, the District filed the Request for Due Process Hearing in this matter in April 2012, there have been two continuances granted in the case, and the District should not have to wait an additional two months to get a resolution of its complaint.

The currently scheduled hearing dates shall remain as calendared.

IT IS SO ORDERED.

Dated: September 14, 2012

/s/

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TIMOTHY L. NEWLOVE  
Presiding Administrative Law Judge  
Office of Administrative Hearings