

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CUPERTINO UNION SCHOOL
DISTRICT.

OAH CASE NO. 2012060148

ORDER GRANTING REQUEST FOR
CONTINUANCE AND SETTING
PREHEARING CONFERENCE AND
DUE PROCESS HEARING

On July 2, 2012, the Cupertino Union School District (District) filed a request to continue the dates in this matter. The Office of Administrative Hearings (OAH) did not receive a response from Student. There have been no prior continuances in this matter.

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. District's contention that OAH has consistently granted continuances on the grounds that a school district is in summer recess is not persuasive. First, the orders cited by District are not binding. Second, to the extent that District's contention warrants any consideration, it is not supported by the Individuals with Disabilities Education Act (IDEA). The IDEA mandates a speedy resolution. The IDEA does not state that due process proceedings are suspended during a summer recess for the school district. If such were the case, all special education litigation would be suspended for approximately a quarter of every

year, and that is not in keeping with the speedy resolution mandate. However, District's contention that a pending decision in a separate action between the parties may have some bearing on how this action will proceed is persuasive. While the two actions are separate, it is possible that the factual findings in the other matter may affect how each party proceeds in this action. Accordingly, a short continuance will allow each party to review the decision and consider what impact, if any, it will have on their prosecution of this matter. Therefore, the request is:

Granted. All dates are vacated. This matter will be set as follows:

Prehearing Conference: August 8, 2012, at 10:00 AM
Due Process Hearing: August 15 – 16, 2012, at 9:30 AM

IT IS SO ORDERED.

Dated: July 10, 2012

/s/

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