

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LODI UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012070710

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

On December 13, 2012, the parties filed a request to continue the dates in this matter on the grounds that they had been unable to timely comply with the terms of an interim agreement that they had previously executed in this matter. The parties contend that this is their second request for a continuance. However, this matter was first continued by order of the Office of Administrative Hearings (OAH) on August 29, 2012, and then continued again on September 25, 2012. Each of those continuances were as a result of requests by the parties. Therefore, this is the third request for continuance.

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 parties request that this matter be continued to February 19, 2013. The case was filed on July 23, 2012. If the matter proceeds to hearing, it is reasonably foreseeable that a written decision would not be issued until middle of April 2013, nine

months after the filing of the request. Effectively an entire school year will have passed before resolution of this dispute is final. Such a delay is unreasonable, especially because it is caused by the parties' inability to properly estimate the time necessary to conduct assessments and hold an individualized education program team meeting, when they entered into their interim agreement in September 2012. Had the parties correctly calculated the time needed to complete the terms of the agreement, they would not be facing additional calendaring issues that now require the matter to be delayed into February 2013. OAH will grant the requested continuance, however, the parties' respective counsel should be more cautious of possible delays that may arise when setting dates based upon interim agreements in future matters. **No further continuances of this matter will be granted.** The matter is set as follows:

Mediation:	January 8, 2013, at 1:00 PM
Prehearing Conference:	February 11, 2013, at 10:00 AM
Due Process Hearing:	February 19, 2013, at 1:30 PM and February 20 – 21, 2013, at 9:00 AM, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

IT IS SO ORDERED.

Dated: December 13, 2012

/s/

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