

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CAMPBELL UNION ELEMENTARY
SCHOOL DISTRICT.

OAH CASE NO. 2014060339

ORDER DENYING REQUEST FOR
CONTINUANCE

On October 3, 2014, the parties moved to continue the dates in this matter on the grounds that they had not had an opportunity to participate in mediation and desired such an opportunity prior to the due process hearing in this matter. This is the second request to continue 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).) The Office of Administrative Hearings 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. Upon Student's filing of the complaint in this matter, OAH

issued a scheduling order, which set the initial mediation in this matter on July 8, 2014. The parties canceled that mediation and requested a continuance of the dates. The parties requested mediation on August 28, 2014. While the request was outside the time lines set out in OAH's continuance form, OAH granted the request. The parties canceled that mediation as well. Now the parties seek a continuance so that they can participate in mediation. However, the new request does not provide any explanation for why the parties have canceled two prior mediations, one of which was set on the date requested by the parties. Furthermore, the parties do not provide any proposed prehearing conference and due process hearing dates, should their request to continue be granted. This creates a potential future request for continuance should OAH select dates for the parties that they then have a conflict with. The Individuals with Disabilities Education Act requires that parties be provided an opportunity to mediate, it does not requiring a never ending opportunity to mediate. Without further information from the parties as to why they failed to take advantage of the two prior mediation dates in this matter, they have failed to establish good cause for a continuance and the request is denied.

IT IS SO ORDERED.

DATE: October 6, 2014

/s/

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