

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGUITO UNION HIGH SCHOOL
DISTRICT.

OAH Case No. 2014060733

ORDER DENYING REQUEST FOR
CONTINUANCE

On July 22, 2014, the San Dieguito Union High School District (San Dieguito) filed a request to continue the dates in this matter on the grounds of witness unavailability. On July 23, 2014, Student filed an opposition, to which San Dieguito filed a response.

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. San Dieguito contends that key witnesses are not available on the currently scheduled hearing date. Student contends that San Dieguito's request to

continue is based upon summer recess and that such a ground is not supported by the Individuals with Disabilities Education Act. San Dieguito responds that it has not sought a continuance due to summer recess, but rather due to witness unavailability. San Dieguito cites to other cases it has pending for hearing during the summer months as evidence that it is not seeking a continuance due to summer recess. However, San Dieguito's moving papers state that its witnesses are not available "because of the District's summer break." The supporting declaration provides no other information as to why San Dieguito's witnesses are unavailable.

The IDEA does not allow for a suspension of due process proceedings during summer recesses. To do so would bring special education proceedings to a grinding halt for a three month period every year. Such an interpretation is not consistent with the speedy mandate of the IDEA. Accordingly, the request to continue is denied.

IT IS SO ORDERED.

DATE: July 24, 2014

/s/

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