

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SADDLEBACK VALLEY UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2014070460

ORDER PARTIALLY GRANTING
DISTRICT'S REQUEST FOR
CONTINUANCE AND SETTING NEW
PREHEARING CONFERENCE AND
DUE PROCESS HEARING DATES

Student filed a request for due process hearing on July 7, 2014. The Office of Administrative Hearings scheduled the hearing for September 2, 2014, continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

On August 7, 2014, District filed a request to continue the dates in this matter. District states that its attorney is unavailable due to a pre-planned and pre-paid-for vacation, and that its employees will be in staff development training on those days. District requests that OAH schedule the hearing on dates in late September and early October, when its attorney, staff, and Director of Special Education will all be available.

Student filed an opposition to District's motion on August 8, 2014. Student contends that District's reasons for the continuance are too vague and thus do not provide good cause for the 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).)

Here, barely a week after OAH set the hearing dates in this case, District contacted Student in order to request a continuance and confer as to new dates based on the unavailability of staff and its counsel. Student first declined any of the requests to discuss a continuance, and then later informed District that he declined to consent to any continuance in the case.

District's request is not vague. District attempted to discuss the matter of a continuance almost immediately after the case was filed. District's attorney has a pre-paid and pre-planned vacation and she is the only attorney from her law firm who is knowledgeable about this case. This is the first request for a continuance by either party. District has shown good cause for the continuance based upon the unavailability of counsel.

District's request for continuance is therefore partially granted. The dates requested by the District are unavailable. The hearing therefore will be set as follows:

Prehearing Conference:	November 10, 2014, at 3:00 p.m.
Due Process Hearing:	November 18, 19, 20, 24, and 25, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. The hearing shall start at 9:30 a.m. on November 18, 2014, and at 9:00 a.m. all other days unless otherwise ordered.

District did not request to change the date of the mediation in this case. The mediation shall remain as presently calendared unless the parties request that the date be vacated and/or re-scheduled.

IT IS SO ORDERED.

DATE: August 08, 2014

/s/

DARRELL LEPKOWSKY
Acting Presiding Administrative Law Judge
Office of Administrative Hearings