

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ROSEDALE UNION ELEMENTARY
SCHOOL DISTRICT and KERN COUNTY
SUPERINTENDENT OF SCHOOLS (KERN
COE),

v.

PARENT ON BEHALF OF STUDENT,

OAH Case No. 2015020979

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

On May 12, 2015, Attorney Darren J. Bogie, attorney for Rosedale Union Elementary School District, filed a Motion to continue this matter on behalf of both parties. His motion was supported by a declaration under penalty of perjury that included authenticated exhibits, including emails from Student's counsel.

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. This is the third continuance of this case, which seeks hearing dates in August 2015. Student recently retained counsel and the parties want to mediate, which is one of the bases for the continuance request. District contends that its staff is not available to testify during the summer break. The IDEA does not contemplate that due process timelines

are tolled because district staff is on summer break. Staff unavailability during school breaks is not a basis for good cause. However, because Student has recently retained counsel, and parties want to mediate, good cause exists to grant the request for continuance, which Student's counsel has affirmatively agreed in Exhibit B attached to District's motion to proposed dates. The parties did not request a date for the prehearing conference, and only requested one day for hearing, without indicating whether or not the matter requires more hearing dates. OAH will set the matter accordingly.

All dates are vacated and this matter will be set as follows:

Mediation:	July 28, 2015 at 9:30 AM
Prehearing Conference:	August 7, 2015 at 1:00 PM
Due Process Hearing:	August 18, 2015 at 9:30 a.m., August 19 and 20, 2015 at 9:00 AM, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

Because this continuance extends the pendency of this case to six months, OAH does not contemplate granting any further continuances absent a substantial showing of good cause.

IT IS SO ORDERED.

DATE: May 12, 2015

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings