

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. 2014020454

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

On June 25, 2014, the undersigned denied a joint request from the parties for failure to establish good cause. On June 27, 2014, the parties filed another request for continuance. The San Dieguito Union High School District (District) contends that its witnesses are not available during the summer recess for a due process hearing. The contention is supported by a declaration from its counsel, with no specific details as to which witnesses are not available and when they will be available again. Student contends that some of her witnesses are also not available during the summer. Student's contention is supported by a declaration from its counsel, equally vague as that of District's. Both parties also contend that they would like to participate in mediation and have not had the opportunity to do so.

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:

Granted, in part. All dates are vacated. First, the parties' contention that they were unable to participate in mediation is incorrect. The parties have been given multiple mediation opportunities and have mediated twice. Despite this inaccuracy in their contention, OAH will grant the parties one more opportunity to mediate. Second, with respect to the unavailability of witnesses, the parties have failed to provide sufficient information to establish good cause. With respect to District's contention that summer recess is good cause for a continuance, nothing in the Individuals with Disabilities Education Act supports such a contention. Finally, even if a continuance of the hearing was warranted due to unavailability of witnesses, nothing supports a continuance to October 2014. Accordingly, only a brief continuance of the due process hearing is granted. This matter will be set as follows:

Mediation:	July 9, 2014, at 9:30 AM
Prehearing Conference:	July 14, 2014, at 1:00 PM
Due Process Hearing:	July 22, 2014, at 9:30 AM, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

IT IS SO ORDERED.

DATE: June 30, 2014

/s/

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