

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CAPISTRANO UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2014030104

ORDER DENYING REQUEST FOR
CONTINUANCE

On May 22, 2014, Parent, on behalf of Student, filed with the Office of Administrative Hearings (OAH) a request to continue the hearing dates in this matter, currently set for June 2 – 5, 2014. On May 23, 2014, the Capistrano Unified School District, through counsel, filed with OAH an opposition to this request. On May 27, 2014, Parent filed with OAH a reply to the District’s opposition. On May 28, 2014, Parent filed with OAH additional information regarding the continuance 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).)

In the pending motion, Student requests a continuance to late July 2014, and sets forth a number of reasons for the continuance: (1) the need to file a cross-complaint; (2) the possibility of retaining an attorney who will need time to review the file; (3) the fact that Student’s educational file is missing documents and unorganized; (4) a looming civil trial

against a bank; and (5) the financial impact on Parent who asserts that she is not available for hearing on Mondays and Tuesdays due to prior business commitments.

Student's request for a continuance lacks good cause. The District filed this special education matter in early March 2014. In mid-March, Parent made a motion to continue the initially scheduled hearing dates, and OAH granted this request, giving the parties a two month extension. The pending continuance request contains many of the same reasons as the first request for an extension of the initially scheduled dates. Thus, Parent has had two months to prepare for the hearing in this matter, retain an attorney, obtain Student's educational records and deal with the civil action. Parent also has the right under special education law to file with OAH a due process complaint on behalf of Student, but the prospect of filing such a proceeding is not a basis for further delay in this matter which, like all special education proceedings, is entitled to a speedy resolution.

Student's request for a continuance is denied. The currently scheduled hearing dates in the case shall remain on-calendar.

IT IS SO ORDERED.

DATE: May 29, 2014

/s/

TIMOTHY L. NEWLOVE
Presiding Administrative Law Judge
Office of Administrative Hearings