

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. NEWPORT-MESA UNIFIED SCHOOL DISTRICT,	OAH Case No. 2015050430
NEWPORT-MESA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2016010309 ORDER GRANTING REQUEST FOR CONTINUANCE AND SETTING PREHEARING CONFERENCE AND DUE PROCESS HEARING

On February 22, 2016, Student filed a request with the Office of Administrative Hearings to continue the dates in this matter based upon the unavailability of key evidence on the dates currently set. On February 24, 2016, District filed a non-opposition. The parties have agreed upon dates for the due process hearing.

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).)

This matter has been pending a long time. Student first filed a due process hearing request with the Office of Administrative Hearings, naming Newport-Mesa Unified School District on April 30, 2015. Student filed a first amended complaint on August 31, 2015. District filed a complaint on January 11, 2016. Student filed a second amended complaint and the cases were consolidated on January 19, 2016.

Student's request is supported by counsel's declaration. Student is currently being assessed and an assessment report is expected by late April or early May. Student contends he would be severely prejudiced if the hearing is held before the independent psycho-educational assessment is finished. District does not object to the continuance.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is granted. All dates are vacated. However, OAH does not anticipate any further continuances in the matter. The time allowed is sufficient to complete the pending assessment and prepare for a hearing.

This matter will be set as follows:

Prehearing Conference:	April 25, 2016, at 1:00 p.m.
Due Process Hearing:	May 4, 2016, beginning at 9:30 a.m. and May 5, 2016, beginning at 9:00 a.m. and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

IT IS SO ORDERED.

DATE: February 25, 2016

DocuSigned by:

Marian H. Tully

MARIAN H. TULLY
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Administrative Law Judge
Office of Administrative Hearings