BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: ORINDA UNION SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017060787 ORDER GRANTING ORINDA'S REQUEST FOR CONTINUANCE AND SETTING PREHEARING CONFERENCE AND DUE PROCESS HEARING DATES

On June 28, 2017, Orinda Unified School District filed a request to continue the dates in this matter with the Office of Administrative Hearings until October, 2017, based upon the unavailability of two key witnesses. Student has not filed a response to Orinda's request for a continuance but, according to Orinda's request for continuance, Student has refused to agree to a continuance.

APPLICABLE LAW

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).)

DISCUSSION

In the present case, Orinda filed for due process in response to Student's request for an independent educational evaluation. Based upon the facts presented, Orinda was required to either file for due process or fund the requested independent evaluation without delay. The due process hearing was scheduled to begin on July 11, 2017. Orinda requested a continuance until October, 2017 due to the unavailability of the school psychologist, who conducted the evaluation at issue in the case, as well as the unavailability of Orinda's Director of Special Education. However, based on the declarations of these witnesses in support of Orinda's request for continuance, these witnesses are available on July 12, 2017. Orinda has therefore established good cause for a short continuance, but not a continuance for the length of time requested.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

☒ Granted. All dates are vacated. This matter will be set as follows:

Prehearing Conference:	July 7, 2017, 10:00 AM
Due Process Hearing:	July 12 and 13, 2017, continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. The first day of hearing will begin at 9:30 AM. Thereafter, hearing will begin at 9:00 AM, unless otherwise determined by the ALJ.

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: July 3, 2017

DocuSigned by:
Rita DeFilippis
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RITA DEFILIPPIS
Administrative Law Judge
Office of Administrative Hearings