BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ANTIOCH UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018050541 ORDER GRANTING REQUEST FOR CONTINUANCE AND SETTING PREHEARING CONFERENCE AND HEARING

On May 11, 2018, Student filed a request for due process naming Antioch Unified School District as respondent. On June 28, 2018, the parties jointly filed a request to continue the dates in this matter to August 29, 2018, based upon the unavailability of a witness required by both parties. A previously filed request for a continuance until after the summer school holidays were over was denied because, although witness unavailability was identified as the basis for the continuance, the witnesses were not identified and their unavailability was not specified.

The IDEA and concomitant California special education laws have established expeditious timelines for initial determinations regarding a student's educational program. 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.

As noted in the order denying the prior continuance request, every continuance delays the resolution of the educational program of the Student involved. It is for this reason that good cause is required in order for a continuance to be granted. (Ed. Code § 56505(f)(3).) OAH does not automatically grant continuances.

Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; 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; whether trial counsel is engaged in another trial; whether the parties agree to the 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).)

Here, good cause has been established for a short continuance. According to a declaration by counsel for Antioch, a witness needed by both parties has a scheduled vacation which is prepaid. His word is accepted as an officer of the court. However, good cause for a continuance until late August has not been support by evidence. The fact that school summer holidays have arrived is not good cause for continuance of a hearing.

ORDER

1. The Request for a Continuance is GRANTED. All previously scheduled dates in this matter are hereby VACATED.

2. The new dates are as follows:

Prehearing Conference	July 20, 2018, 10:00 a.m.
Hearing	July 31, 2018, August 1 and 2, 2018.

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: June 28, 2018

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Penelope S. Pahl
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PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings