

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:
PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGUITO UNION HIGH SCHOOL DISTRICT,
OAH CASE NUMBER 2019090124

and

SAN DIEGUITO UNION HIGH SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,
OAH CASE NUMBER 2019100015

ORDER DENYING REQUEST FOR CONTINUANCE

On November 19, 2019, Student filed with the Office of Administrative Hearings, referred to as OAH, a request to continue this matter, based upon the unavailability of

two of Student's expert witnesses during the currently scheduled week of hearing. On November 21, 2019, San Dieguito Union High School opposed the 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. (Ed. Code, § 56505, subd. (f)(3); 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 or imposing conditions on the continuance; and any other relevant fact or circumstance. (Cal. Rules of Court, rule 3.1332(d).)

The hearing in this matter is set for January 7 through 9, 2020. A prehearing conference, referred to as a PHC, is set for December 30, 2019. At the previous PHC, Student moved for a continuance of the hearing of this matter. San Dieguito objected to the length of the continuance requested. The Administrative Law Judge granted the continuance and provided the choice of four different weeks for the continued hearing.

Counsel for Student and San Dieguito agreed to the currently scheduled hearing dates. Student now argues that two of its experts are unavailable for testimony during that week, as they will be attending a conference in the state of Hawaii. Student requests a continuance to the following week. San Dieguito opposes the motion arguing that Student agreed to the week of hearing and that Student should have known about the potential unavailability of his experts. San Dieguito further argues that there is no basis to continue the entire hearing due to the unavailability of two of Student's witnesses.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. Continuances are disfavored, and Student has not provided good cause for OAH to continue the entire consolidated matter. This is Student's second request for a continuance. The first request was granted; the hearing was set on agreed dates to continue day to day as needed at the discretion of the Administrative Law Judge. Additional hearing days or telephonic testimony may be arranged with the Administrative Law Judge hearing the matter. Student's request for a continuance is denied.

All prehearing conference and hearing dates are confirmed and shall proceed as calendared.

IT IS SO ORDERED.

DATED: November 22, 2019

Brian H. Krikorian
Administrative Law Judge
Office of Administrative Hearings