

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

COUNTY OF SAN DIEGO OFFICE OF
EDUCATION.

OAH CASE NO. 2012110566

ORDER DENYING SECOND
REQUEST FOR CONTINUANCE

On February 4, 2013, County of San Diego Office of Education (COE) filed a second request to continue the dates in this matter on grounds that COE had not received various documents which were subject to subpoenas duces tecum (SDT). On February 7, 2013, Parent, on behalf of Student (Student), opposed the request based upon grounds that COE had failed to properly obtain a required order permitting release of the records from the Presiding Judge of the Juvenile Court. Additionally, Student had obtained records which were subject to the SDT's and had produced several of the documents and had produced privilege logs of those documents it had withheld.

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).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is **DENIED** as the failure to obtain the records sought by its SDTs was the failure of the COE to obtain the required court order.. The due process

hearing will commence as scheduled on Monday, February 11, 2013 at 1:30 p.m.at the offices of the COE located at **6401 Linda Vista Road, San Diego, CA 92111.**

On the first day of the hearing, the Administrative Law Judge (ALJ) will review the status of production of documents as to the SDT's and conduct an in-camera review of documents which are listed in Student's privilege logs.

IT IS SO ORDERED.

Dated: February 08, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings