

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PAJARO VALLEY UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2014050575

ORDER DENYING REQUEST FOR  
CONTINUANCE

On June 6, 2014, the Pajaro Valley Unified School District (Pajaro) filed a request to continue the dates in this matter on the grounds that its Special Education Local Plan Area Director was unavailable to testify on the currently set hearing date. The request was accompanied by a sworn declaration from the director establishing a pre-planned and pre-paid out of state trip as grounds for his unavailability. Pajaro contends that the director is an essential witness whose testimony it requires to defend this case. On June 10, 2014, Student filed an opposition.

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).) The Office of Administrative Hearings 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. All prehearing conference and hearing dates are confirmed and shall proceed as calendared. While Pajaro's request mentions unavailability of witnesses in general due to the school district's summer recess, the request is based solely upon unavailability of the director and need for the director's testimony. To the extent that summer recess is raised as grounds for continuance, the Individuals with Disabilities Education Act does not suspend due process proceedings during summer recesses. With respect to the director's absence, the request establishes that the director is unavailable to testify on July 8, 2014, the currently scheduled hearing date. However, one witness' unavailability does not establish cause to continue the entire hearing. Accordingly, the request for continuance is denied. However, at the prehearing conference in this matter Pajaro shall provide information regarding when the director shall return and be available to testify. The Administrative Law Judge presiding at the prehearing conference has the discretion to schedule additional hearing dates as necessary to ensure the testimony of the director.

IT IS SO ORDERED.

DATE: June 11, 2014

/s/

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BOB N. VARMA  
Presiding Administrative Law Judge  
Office of Administrative Hearings