

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014051179

ORDER DENYING REQUEST FOR
CONTINUANCE BY DISTRICT AND
DENYING REQUEST FOR
CONTINUANCE BY STUDENT

On June 18, 2014, the Newport-Mesa Unified School District (Newport-Mesa) filed a request to continue the dates in this matter on the grounds that Newport-Mesa will be in summer recess when this matter is calendared for hearing; and upon conclusion of summer recess, its counsel needs additional time due to other possible hearings he may have. On June 20, 2014, Student filed an opposition to Newport-Mesa's motion.

On June 18, 2014, Student filed his own request to continue the dates in this matter on the grounds that his counsel is unavailable on the currently scheduled date for hearing. While counsel attached a declaration to the motion, there is no information provided as to when counsel booked his pre-planned trip that makes him unavailable. As Student's request to continue is denied, as discussed below, the Office of Administrative Hearings need not wait for a response from Newport-Mesa as to Student's 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. (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. All prehearing conference and hearing dates are confirmed and shall proceed as calendared. As to Newport-Mesa's request, nothing in the Individuals with Disabilities Education Act requires the suspension of due process proceedings during summer recesses of school districts. Where this the case, all special education proceedings throughout the country would come to a halt for the summer months, a result contrary to the speedy resolution mandate of the IDEA. Furthermore, as Newport-Mesa's counsel's conflicting hearings have not commenced, a request for continuance on that ground is premature.

As to Student's request for continuance, a vague allegation in the request and accompanying declaration as to unavailability of his counsel does not establish good cause. There is no detail provided as to counsel's pre-planned trip or proof provided establishing that the trip was arranged prior to OAH's setting of this matter.

Accordingly, both Newport-Mesa and Student's requests for continuance are denied.

IT IS SO ORDERED.

DATE: June 20, 2014

/s/

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