

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

HOLLISTER SCHOOL DISTRICT.

OAH CASE NO. 2014060180

ORDER DENYING REQUEST FOR
CONTINUANCE

On June 27, 2014, the Hollister School District (Hollister) filed a request to continue the dates in this matter on the grounds that Hollister is in summer recess on the currently scheduled hearing date. On July 2, 2014, Daniel Shaw, attorney for Student filed an opposition to Hollister'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. While there have been no prior continuances in this matter, if the parties cannot agree on an initial continuance, a party moving for a continuance has to establish good cause. Hollister asserts that its staff is unavailable to testify due

to summer recess and therefore, the hearing should be continued. In support of its request, Hollister has submitted the declaration of its counsel. There are no specifics provided as to the witnesses that will be unavailable and when they planned and purchased their vacations. Student correctly points out that nothing in the Individuals with Disabilities Education Act suspends due process proceedings during summer recess of school districts. Hollister has not established good cause for a continuance.

Hollister has also submitted as an exhibit a chain of emails between Hollister's counsel and Mr. Shaw. The emails establish that while Student did not agree to the continuance, Mr. Shaw did not have a substantive objection to Hollister's request. Mr. Shaw refused to discuss a continuance until the parties attend mediation, and mentioned that he is looking to amend the complaint.¹ Mr. Shaw's position displays nothing more than unnecessary gamesmanship.

Accordingly, Hollister's request for continuance is denied. However, at the prehearing conference in this matter Hollister shall present necessary information to establish which key witnesses are unavailable and the Administrative Law Judge at the prehearing conference shall consider adding additional days to accommodate the unavailable witnesses.

IT IS SO ORDERED.

DATE: July 3, 2014

/s/

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

¹ An amendment to the complaint would automatically reset the time lines in the matter, delaying the currently scheduled hearing.