

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MORGAN HILL UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014040070

ORDER DENYING REQUEST FOR
CONTINUANCE

On July 17, 2014, the Morgan Hill Unified School District (Morgan Hill) filed a request to continue which listed the unavailability of multiple witnesses as grounds for the request. While the Office of Administrative Hearings typically waits three business days for the other party to respond, here Student, because the request is denied, OAH need not wait to issue this order.

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. All of Morgan Hill's reasons for a continuance can be summed up in one phrase, "summer recess." Morgan Hill's representative and

employees are unavailable for hearing because Morgan Hill is in summer recess and people have left for vacation or are not under contract. The Individuals with Disabilities Education Act does not suspend due process hearings for summer recesses. To do so would bring special education proceedings to a grinding halt for approximately three months every year around the country. Clearly this was not the intent of the speedy resolution mandate of the IDEA.

There are further reasons to deny the request in this case. On April 29, 2014, OAH set the July hearing date in this matter.¹ The parties have known for some time that this hearing was set to commence on July 28, 2014. Morgan Hill's failure to interview and prepare its witnesses while they were still working during the 2013-2014 is not good cause for a continuance. As of the failed mediation of May 20, 2014, Morgan Hill knew there was a realistic possibility that this matter may proceed to hearing in July. Yet, it neither prepared its witnesses, nor made sure they would be available, nor filed a timely request for continuance. Furthermore, Morgan Hill's failure to provide sufficient information to establish that its representative and witnesses booked their summer vacations prior to the April 29, 2014 order setting the hearing date, is another reason to deny the request.² Finally, both parties are affected by this order. Morgan Hill has no obligation to produce its employees as witnesses for Student, if those witnesses are not under contract for the summer. Both parties have available to them the power of the subpoena to compel the attendance of their respective witnesses.

The request to continue is denied.

IT IS SO ORDERED.

DATE: July 18, 2014

/s/

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

¹ Morgan Hill contends that a separate ground for continuance is that this matter requires more than the one day of hearing set by the April 29, 2014 order. It is clear Morgan Hill has failed to read the full order which states that the hearing shall be held on "July 28, 2014, at 9:30 AM, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge."

² If at the prehearing conference Morgan Hill can establish that its representative booked her July vacation prior to April 29, 2014, it may be entitled to a continuance of no longer than one week.