

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014120688

ORDER GRANTING REQUEST FOR
CONTINUANCE AND SETTING
MEDIATION, PREHEARING
CONFERENCE AND HEARING

On January 12, 2015, Student filed a request to continue the hearing by approximately two weeks on the ground that Student's counsel had been unavailable for mediation due to an out of the country vacation and was not available for the hearing in this matter because counsel was representing a different client in a hearing the same day. Student noted that counsel had discussed potential dates with District's counsel and was aware of District counsel's availability. Student's counsel did not argue her unavailability on the dates proposed by District in its response, but instead argued that the length of the continuance was prejudicial. Student's motion mentioned wanting a mediation date, but failed to include one. District responded by agreeing to a continuance, but on dates District's counsel was available 68 days from the original hearing date. District's counsel cited the same reasons as Student's counsel – unavailability due to commitments to represent other clients in hearings or mediations. The matter will be continued to the first available dates listed by District's counsel.

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:

☒ Granted. All dates are vacated. Neither attorney is available on the initial hearing dates because they both have other commitments. Student's counsel is available on the dates District counsel requested. The matter will be set on the first available dates for District. To the extent Student argues that he will not be receiving a FAPE during this time, the continuance is not particularly lengthy, and the IDEA addresses possible prejudice by including a "stay put" provision and the availability of compensatory remedies. This matter will be set as follows:

Mediation:	March 3, 2015 at 9:30 AM
Prehearing Conference:	April 6, 2015 at 3:00 PM
Due Process Hearing:	April 13-16, 2015 at 1:30 PM first day, 9:00 AM other days, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

IT IS SO ORDERED.

DATE: January 14, 2015

/s/

RICHARD T. BREEN
Presiding Administrative Law Judge
Office of Administrative Hearings