

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ESCONDIDO UNION SCHOOL
DISTRICT.

OAH Case No. 2015050869

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

On June 12, 2015, the parties jointly filed a request to continue the dates in this matter. Their request follows an order issued by the Office of Administrative Hearings on June 9, 2015 denying a request to continue based on a lack of showing of good cause. The current motion was supported by declarations under penalty of perjury.

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).)

The parties contend that this matter should be continued to October 5, 2015, which is 110 days beyond the initial hearing date of June 17, 2015, for two reasons. First, they contend that District witnesses are not available because of summer break. The IDEA does not contemplate that the statutory deadlines for issuance of decisions shall be tolled because school districts are not active during summer or other breaks. The parties have resources available to them to ensure that necessary witnesses are available for hearing. District filed its case on May 22, 2015, and should have anticipated that this matter would be scheduled

for hearing at or around the time the District went on break for summer. Therefore, unavailability of witnesses is not good cause for a lengthy continuance.

The parties' second reason for a lengthy continuance is that Student has retained an expert to conduct an independent educational evaluation, and that assessor cannot not observe Student in classes until after the beginning of the 2015-2016 school year. The parties argue that the witness's observations are crucial to Student's defense in the case, and are more appropriately done after Student adjusts to the first few weeks of school. Based on this reasoning, the parties have established good cause for a continuance.

However, because the continuance exceeds 90 days from the initial hearing date of June 17, 2015, OAH does not contemplate granting any further continuances in this matter absent a substantial showing of good cause.

The parties' request for continuance is:

☒ Granted, with modification to the hearing dates requested. All dates are vacated. This matter will be set as follows:

Mediation:	September 2, 2015 at 9:30 AM
Prehearing Conference:	September 25, 2015 at 10:00 AM
Due Process Hearing:	October 6, 2015 at 9:30 a.m., October 7-8, 2015 at 9:00 a.m. and October 12, 2015 at 1:30 p.m. unless otherwise ordered by the ALJ, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. Please note that OAH does not schedule hearings on the first Monday of the month.

IT IS SO ORDERED.

DATE: June 12, 2015

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings