

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015060365

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

On June 22, 2015, at 5:00 p.m., Parent on Student's behalf filed a request to continue the dates in this matter. District filed an opposition to Student's request on June 23, 2015. The complaint was filed on May 13, 2015, and the initial hearing date is July 7, 2015. Student's request is the first request for continuance in this case.

Parent, who is unrepresented by counsel, asserts in his motion that District recently informed him that District employees whom Student intends to call as witnesses at hearing are not available because of District's summer break. District informed Parent that he must subpoena those witnesses for hearing; Parent has requested information from District in order to serve subpoenas but has not yet received a response; and District has not offered to voluntarily make those witnesses available. As a result, Parent requests a continuance of the prehearing conference and due process hearing to have sufficient time to serve subpoenas on necessary witnesses for Student's case. Parent proposed two hearing dates as alternatives.

District opposes the motion, contending that Parent's motion is a delay tactic, and that Student's complaint is redundant of an earlier complaint filed and voluntarily dismissed by Parent on the eve of filing this matter. District acknowledges that its staff are not contracted to work for the summer and must be subpoenaed to ensure participation at the hearing as Student's witnesses. District did not offer to make the witnesses available in order for the hearing to proceed on the original dates scheduled. District offered no available dates.

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. This is the first time a continuance has been requested in this matter, and Parent is seeking a continuance into mid-September, less than 90 days after the initial hearing date. Parent has established good cause for a continuance. District has not demonstrated that granting Student's request would cause it any prejudice.

Accordingly, the request is granted. Because the parties have not agreed upon dates, this matter will set as follows:

Prehearing Conference September 4, 2015 at 10:00 a.m.
(telephonic):

Due Process Hearing: September 15, 2015 at 9:30 a.m., September 16 and
17, 2015 at 9:00 a.m., and continuing day to day,
Monday through Thursday, as needed at the
discretion of the Administrative Law Judge.

Parent is responsible for serving subpoenas on the witnesses based upon the hearing dates set above. District shall cooperate with Parent by either providing the last known address and phone number of District staff for purposes of Parent's subpoenas, or by accepting service on behalf of the witness to accomplish service. The parties shall discuss witnesses and their availability with the hearing judge at the prehearing conference.

IT IS SO ORDERED.

DATE: June 23, 2015

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings