

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015020701

ORDER DENYING REQUEST FOR
CONTINUANCE WITHOUT
PREJUDICE

On June 29, 2015, the parties filed a joint request with the Office of Administrative Hearings to continue the dates in this matter based upon the desire to participate in mediation and witness unavailability. This is the parties' second continuance 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. First, the parties agreed on March 24, 2015, to currently set hearing dates of July 13 – 16, 2015. Next, the parties do not identify the District employees they intend to call as witnesses who are unavailable due to pre-existing summer vacation plans, nor provide a declaration that these individuals will be in fact

unavailable. The parties' continuance request does not provide any documentation or declarations under oath confirming that these witnesses had made their plans prior to the March 24, 2015 continuance request. While District may be on summer recess, the Individuals with Disabilities Education Act does not suspend due process proceedings during school district summer recesses. Were it to do so, all special education due process proceedings would come to a halt for three months each year. Clearly such is not in keeping with the speedy resolution mandate of the IDEA. Finally, the parties do not explain the delay in requesting a new mediation date after they cancelled the initial March 16, 2015 mediation. Therefore, the request to continue is denied without prejudice to resubmit with appropriate documentation.

IT IS SO ORDERED.

DATE: June 29, 2015

/s/

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings