

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SAN DIEGUITO UNION HIGH SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015080561

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

District filed a due process hearing request (complaint) with the Office of Administrative Hearings on August 13, 2015. It filed an amended complaint on November 24, 2015, and all dates were vacated and reset. The amended complaint is set for hearing on December 14, 2015.

On December 2, 2015, Student filed a request to continue the dates in this matter, supported by a letter from Parent. Student contends that her attorney withdrew from this matter on November 18, 2015 and she needs additional time to find new counsel. Parent asserted that she attempted on two occasions to reach District's counsel to discuss alternative dates, and did not receive a return telephone call. District filed an opposition on December 7, 2015, arguing that 1) District is entitled to a timely hearing, and 2) Student did not confer with Districts' counsel about dates. Districts did not offer alternative dates in its opposition or support its opposition with a declaration 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).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. Student has established good cause for a continuance. The request will be granted to allow Student time to retain new counsel.

However, OAH is not inclined to grant any further continuances in this matter, absent a substantial showing of good cause supported by a declaration under penalty of perjury authenticating facts supporting the request.

All dates are vacated. This matter will be set as follows:

Mediation:	January 19, 2016 at 9:30 AM
Prehearing Conference:	February 1, 2016 at 3:00 PM
Due Process Hearing:	February 8, 2016 at 9:30 a.m., February 9 and 10, 2016 at 9:00 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing “good cause” to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

IT IS SO ORDERED.

DATE: December 7, 2015

/s/
ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings