BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. ESCONDIDO UNION ELEMENTARY SCHOOL DISTRICT.	OAH Case No. 2018041322 ORDER GRANTING IN PART AND DENYING IN PART REQUEST FOR CONTINUANCE AND SETTING NEW PREHEARING CONFERENCE AND DUE PROCESS HEARING DATES

On June 11, 2018, Escondido Union Elementary School District filed a request to continue the dates in this matter with the Office of Administrative Hearings, based upon the unavailability of witnesses for the due process hearing scheduled to commence on June 26, 2018. District asserts that District's Assistant Superintendent of Support Services, Kelly Prins, will be out of the state from June 25, 2018 to July 14, 2018. Ms. Prins' travel plans were made in February 2018. Furthermore, District's school psychologist Erin Acero and speech-language pathologist Benjamin Bennett will be out of the state on June 18, 2018, to June 30, 2018, and June 17, 2018, to August 4, 2018, respectively. Ms. Acero and Mr. Bennett's travel plans were made in March 2018. District proposed a hearing date of September 25, 2018, and a prehearing conference date of September 14, 2018, based on conflicting mediations and due process hearings that counsel for District as well as Ms. Prins are expected to be involved in.

On June 14, 2018, Student filed an opposition to the motion to continue the due process hearing. Student claims that District had agreed to the June 26, 2018 due process hearing date on May 3, 2018, when District did not oppose Student's motion to consolidate District's case and Student's case.[1] The motion to consolidate was granted by OAH, designating Student's case as the primary case and the consolidated matters to proceed on the dates set for Student's case. Furthermore, Student argues that unavailability of District's staff for hearing due to the summer break does not constitute good cause for a continuance. Furthermore, Mother is 21 weeks pregnant and the proposed date of September 25, 2018, falls close to the time when Mother may expect to give birth.

On June 15, 2018, District filed a reply to Student's opposition. District indicated that it would be available for hearing in late August and early September.

[1] District filed a complaint with OAH, case number 2018020192, on February 2, 2018, that District withdrew on June 5, 2018.

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).)

Here, Ms. Prins, Ms. Acero, and Mr. Bennett are crucial witnesses for hearing and their unavailability is not merely due to District's summer break but rather to their travel plans that will take them out of the state. These witnesses arranged their travel plans prior to Student filing his complaint on April 30, 2018.

Furthermore, the June 26, 2018 due process hearing date was selected by OAH and District's non-opposition to Student' motion to consolidate merely indicated District's non-opposition to consolidation. Though neither party requested to change the hearing dates at the time of consolidation, District's motion to continue is not untimely as it was filed three business days prior to the prehearing conference scheduled for June 18, 2018. Therefore, District established good cause to continue the due process hearing. However, the conflicts with mediations and due process hearings that District discussed in its motion fails to demonstrate why the hearing cannot be held in mid-August 2018.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request to continue the due process hearing is granted in part and denied in part. All dates are vacated. This matter will be set as follows:

Prehearing Conference:	August 6, 2018 at 1:00 p.m. On June 13, 2018, both parties filed their prehearing conference statements. No further prehearing conference statements need be filed unless changed circumstances so require.
Due Process Hearing:	August 14, 15, and 16, 2018, at 9:30 a.m. on the first day and 9:00 a.m. on all other days, 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: June 18, 2018

DocuSigned by:
Rommel P. Cruz
ROMMEL P. CRUZ
A2ABEBDA0DE98475...
Administrative Law Judge
Office of Administrative Hearings