

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

POMONA UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011020535

ORDER DENYING REQUEST FOR
CONTINUANCE

On July 19, 2011, Pomona Unified School District (District) filed a letter stating incorporating an interim settlement agreement between the parties by reference and asking that the hearing be “postponed.” OAH has interpreted this as a motion for a continuance. As discussed below, the motion fails to establish good cause for a continuance, and is denied.

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); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332 .) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

OAH has reviewed the request for good cause and the request is denied. As an initial matter, merely because parties agree to new dates, whether in a joint motion, or an “interim agreement,” does not automatically result in a continuance. At no time has OAH permitted parties to “postpone” hearings solely by agreement. At all times, parties are only granted continuances for good cause as determined by an ALJ.

Here, good cause for a continuance has not been shown. The parties have already been granted two continuances, and this matter was filed in February. In their second request for a continuance filed on June 8, 2011, the parties acknowledged that all prior continuances were granted for the purpose of allowing the parties time to conduct the IEEs and potentially settle. No explanation is given for the further delays, particularly in light of the IDEA’s presumption that assessments can be performed and an IEP that offers a FAPE held within 60 days of a signed assessment plan. (Ed. Code, § 56302.1, subd. (a).)

Further, the parties have failed to show how implementation of the interim agreement provides good cause for a continuance. Student’s complaint alleges: 1) that Student was denied a FAPE because District did not timely produce documents in June and November of 2010; 2) that Student is entitled to a psychoeducational IEE because Student disagrees with District’s January of 2011 psychoeducational evaluation; 3) that District failed to offer

Student a FAPE in an IEP held on January 19, 2011, specifically because Student's lack of high school credits and transition plan were not addressed; and 4) Whether District violated its "child find" duty to Student for a period greater than the two year statute of limitations prior to the February 11, 2011 filing date. Student's Issue 5, alleging civil rights violations, is outside of OAH jurisdiction. The interim agreement referenced by District states that the parties have agreed to independent educational evaluations in psychoeducational, vision therapy, and auditory processing, as well as a referral for a mental health services evaluation. The parties have also agreed to hold an IEP team meeting upon receipt of the results of the evaluations, which they would have to do anyway in order to provide Student with a current offer of a FAPE.

As to Student's first issue regarding document production, nothing in the interim agreement is required to go to hearing on this claim. As to Student's second issue, regarding a psychoeducational IEE, this appears to have been resolved by the interim agreement. As to Student's third issue, that he was not offered a FAPE at a January 19, 2011 IEP, this issue requires examination of what was reasonable at the time, not what was reasonable following the agreed-upon IEEs. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149; see *E.M. v. Pajaro Valley Unified School District* (9th Cir. July 11, 2011) 2011WL2714168 [although appearing to approve consideration of after-acquired evaluations, case appears limited to their use to augment the record on review of an administrative hearing decision in the District Court].) Student's contention in issue three acknowledges that at the time of the IEP, District recommended that assessments in visual processing, auditory processing, and speech and language were required, such that subsequent assessments would not change whether the offer was appropriate in these areas. Instead, issue three on its face is concerned with the lack of a transition plan and failure to address Student's lack of high school credits, such that the interim agreement does not appear relevant to resolving these questions. Finally, Student's issue four is a "child find" issue that requires analysis of whether District had sufficient information from which to suspect Student should be evaluated for special education at the time. (see, *Dept. of Education, State of Hawaii v. Rae* (D. Hawaii 2001) 158 F.Supp.2d 1190, 1194-1195.) Nothing about current assessments would change what facts the District knew two or more years ago.

In sum, nothing in the interim agreement or District's letter explains how IEEs conducted long after the filing of the complaint, or the development of a current IEP based on those IEEs, have any impact on the evidence Student would need to produce at hearing for the specific issues raised that date back more than three years prior to the filing date of Student's complaint. The parties have had ample time to conduct settlement negotiations and further assessments to facilitate settlement negotiations, but have offered no explanation for further delays. Good cause has not been shown for a continuance. All prehearing conference and hearing dates are confirmed and shall proceed as calendared.

IT IS SO ORDERED.

Dated: July 20, 2011

/s/

RICHARD T. BREEN
Presiding Administrative Law Judge
Office of Administrative Hearings