

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOWELL JOINT SCHOOL DISTRICT.

OAH CASE NO. 2011120923

ORDER DENYING REQUEST FOR
CONTINUANCE

On May 24, 2012, the parties filed a stipulated second request for a continuance. The last continuance granted indicated that OAH did not contemplate any further continuances given the age of the matter. The current request stated that an IEE that the parties had agreed to had not occurred due to delay by the assessor. District's counsel was aware of this as early as May 3, 2012. The parties represent that the assessor will have the assessment completed by June 11, 2012, and that they intend to attend an IEP team meeting on June 13, 2012. The parties request a mediation at the end of June and a hearing in September, yet no explanation of good cause is given for such a lengthy delay in the hearing.

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. The parties were on notice on March 21, 2012 that further continuances were not contemplated given that the matter had been filed in December of 2011 and almost 90 days had passed by the time of the request. The current request fails to explain why, given the urgency of proceeding to hearing in light of the no further continuances order, the independent assessor did not contact the Student until May 2, 2012, as reflected in the exhibit to the continuance motion. More importantly, the parties have made absolutely no showing why the hearing in this matter should be continued as far as September of 2012, a period of nine months from the filing date. All dates remain on calendar and shall proceed as scheduled. The parties are expected to file PHC statements and be ready to proceed at the prehearing conference on May 30, 2012. At the PHC, the parties may discuss their request for mediation prior to hearing.

IT IS SO ORDERED.

Dated: May 25, 2012

/s/

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