

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012050612

ORDER DENYING DISTRICT'S  
REQUEST FOR CONTINUANCE

The due process hearing in this matter is currently scheduled to begin at 9:00 a.m. on July 11, 2012, and continue day-to-day, Monday through Thursday, until completed.

On June 19, 2012, District filed a request for a continuance of the hearing dates on the ground that its attorney, who works for a private law firm, had a conflict with representation of another school district in an IDEA due process hearing where the hearing was expected to start July 10, 2012, and continue day-to-day through approximately July 19, 2012. District also contended that good cause exists because an important District witness was not available for the currently scheduled hearing start date of July 11, 2012. District did not provide the exact dates that the witness was unavailable, but generally alluded to unavailability during July. District sought August hearing dates based on its outside counsel's availability. The two declarations submitted by District (from its attorney and the witness) did not address whether the witnesses testimony could be obtained from other means, such as telephonically, or provide exact dates of witness availability.

Also on June 19, 2012, Student filed an opposition that generally argued: 1) prejudice to Student's family because they were self-funding a unilateral placement and only the identified attorneys could handle the matter; 2) insufficient good cause was shown by the alleged unavailability of the District witness; 3) insufficient good cause was shown by the unavailability of one attorney associated with a law firm; 4) Student's family was available on the current dates, but not available between some unspecified time in late July and August 9, 2012; and 5) the policies underlying the IDEA generally disfavor continuances when opposed by a student. Student's opposition was supported by declarations from Student's attorneys that demonstrated their unavailability on numerous dates due to representation of other students, other professional commitments, and unspecified personal appointments.

Student filed a correction to the opposition on June 21, 2012. The correction noted that Student's attorney did not have a previously stated conflict with another hearing the week of August 20, 2012, but that Student's attorney did not want to go to a hearing that week regardless in order to be available for other clients. That same date, District filed a response to the opposition in which it further argued, like the argument made by Student's

counsel, that only the chosen attorney could handle the hearing, and that District would be prejudiced because it may be in up to eight hearings simultaneously at the time this hearing is scheduled to begin.

Neither party addressed that their respective attorneys are scheduled to be in a prehearing conference in OAH case number 2011120053 (a matter involving a different student in a different school district) on the date and time the instant due process hearing is scheduled to begin. The attorneys for both sides also failed to address that they filed a stipulated request for a continuance of the hearing in that matter to July 23-26, 30-31, 2012 and August 1, 2012. The stipulated request for a continuance in OAH case number 2011120053 was granted on June 20, 2012, such that counsel for both sides are not available for hearing on those dates.

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 and the request is denied. The declarations in support of District's motion did not demonstrate that the witness was truly unavailable July 11, 12, 16-19, 2012 (the only dates Student's counsel appears to be available in July given the stipulated hearing dates in OAH case number 2011120053). Specifically, District did not demonstrate that the testimony could not be obtained by other means, or that the hearing could not be substantially completed on the scheduled dates with an additional date scheduled when the witness was actually available. To the extent District argues that the continuance is justified by counsel having other obligations for another school district, District has failed to demonstrate good cause.

The arguments by counsel for both sides that only they personally can represent their respective clients are not convincing and do not demonstrate that the schedules of either District's attorney or Student's attorney should be factored. It appears from the declarations of counsel for both sides that they are equally over-extended, so that absent mutually agreed

dates, no matter what OAH schedules, someone will have a conflict. To the extent Student argued in opposition the financial hardship to parent because parent has unilaterally placed Student, that argument would have more weight if District had requested a continuance longer than 30 days, which it had not. Similarly, interest or borrowing cost may be available as part of an equitable remedy should Student prevail, such that parent's financial circumstances were not factored in denying District's motion.

In light of the above, District's motion for a continuance is denied. District may renew the motion on the ground of witness unavailability only. However, any such renewed motion must be supported by information about the exact dates the witness is unavailable, and reasons why the testimony could not be obtained by other means such as telephonically, by stipulation or declaration, or at some other date in the near future after the bulk of the hearing has been completed.

All dates remain on calendar, such that the parties should anticipate this matter being heard beginning July 11, 2012, and continuing day to day, Monday through Thursday, until completed.

IT IS SO ORDERED.

Dated: June 21, 2012

/s/

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