

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

STOCKTON UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013050798

ORDER DENYING REQUEST FOR
CONTINUANCE WITHOUT
PREJUDICE

On October 9, 2013, the parties filed a request to continue the dates in this matter on the grounds that Student intends to file a second amended complaint by October 15, 2013, the filing of which the Stockton Unified School District has stipulated to. The parties propose a continued mediation date of October 17, 2013, and a due process hearing date of November 18, 2013. They further stipulate that upon the filing of the second amended complaint they desire to maintain these newly proposed dates. As discussed below, the request 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) & (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).) The Office of Administrative Hearings (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. Under the Individuals with Disabilities Education Act the filing of an amended complaint resets the timeline for the due process hearing and issuance of a written decision. (20 U.S.C. § 1415(c)(2)(E)(ii).) If Student files a second amended complaint on October 15, 2013, OAH must wait 30 days for the conclusion of the resolution period prior to starting the 45-day timeline to conduct a due process hearing, including providing the parties with an opportunity for mediation. (20 U.S.C. § 1415(f)(1)(B)(ii).) The dates currently requested by the parties would place the mediation within the 30-day resolution session time period.

To address the issue discussed above, the parties state that they intend to waive a resetting of the 45-day time line when Student files the second amended complaint. Parties to a due process hearing can agree to waive the resolution session meeting or use mediation in lieu of the resolution session. (20 U.S.C. § 1415(f)(1)(B)(i)(A)(iv).) Assuming the parties file the proper stipulation, signed by both parties, asking to waive the resolution session and advance the due process hearing dates, the 45-day time line for issuance of the decision would commence from the date of filing of the second amended complaint. Assuming that Student files the second amended complaint on October 15, 2013, this would place the due process hearing of November 18, 2013, at day 34 in the 45-day time line. Such a hearing date would leave the parties and OAH with insufficient time to conduct the due process hearing and render a timely decision. Accordingly, the parties request for continuance is denied.

The parties are instructed to meet and confer, consider the contents of this order and reconsider the date upon which Student will file the second amended complaint and the dates the parties intend to propose for mediation and due process hearing. After consideration of this order, the parties may refile a request to continue.

IT IS SO ORDERED.

Dated: October 9, 2013

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings