

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2013060735

ORDER DENYING IN PART AND
GRANTING IN PART REQUEST FOR
CONTINUANCE

On June 14, 2013, Student filed a due process hearing request (complaint) naming District as the respondent, alleging that District denied Student a free appropriate public education (FAPE) from November 21, 2012, to June 12, 2013, by failing to develop an appropriate IEP, failing to review and revise Student's IEP's, failing to offer Student an appropriate placement in the least restrictive environment, and depriving Parents of the opportunity to meaningfully participate in the development of Student's educational program. On June 28, 2013, matter was continued for good cause to the currently scheduled dates, at the parties' joint request.

On September 19, 2013, the parties jointly moved for a second continuance of this matter for five months until February 2014. The stated reason for the requested continuance is that the parties have just entered into an Interim Agreement, dated September 19, 2013, settling Student's placement and program for the 2013-2014 school year, but are not prepared to finally resolve the complaint. The stated reason for the need to keep the complaint active is that "a few months of consistent placement will be required to make effective decisions regarding Student's longer term program." As discussed below, the joint motion for a five-month continuance is denied; however a brief two-week continuance is granted to permit the parties to determine whether they wish to dismiss this matter or proceed on it.

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).)

The long-term propriety, or not, of the remedy the parties have agreed to cannot constitute good cause for a lengthy continuance of this matter. The issues stated in the complaint relate to whether District did or did not deny Student a FAPE during the time period from November 21, 2012 through June 12, 2013. That time frame is what the complaint frames in the issues to be resolved; those issues can be adjudicated, and are not altered by the future program that has been agreed to in the Interim Agreement. Thus, good cause does not exist for a lengthy continuance of this matter.

Nevertheless good cause exists for a brief two-week continuance to permit the parties to determine whether they wish to dismiss this matter or proceed on it. Should the parties elect to finally resolve this matter, and then be dissatisfied with the long-term effects of the remedy they have fashioned, they remain free to bring another due process complaint in the future regarding Student's ongoing program. Absent a dismissal or withdrawal, however, the matter shall proceed as scheduled below.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

Granted in part. All dates are vacated. Further continuances, particularly on the ground of settlement discussions, are not contemplated, as the parties will have had more than ample opportunities and time to explore settlement. This matter is set as follows:

Due Process Hearing: October 8-10, 2013 at 9:30 AM on all days, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. Unless otherwise ordered, the location of the hearing shall be the location requested by District and confirmed in the ALJ's recent Order.

IT IS SO ORDERED.

Dated: September 20, 2013

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings