

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2013060845

ORDER DENYING STUDENT'S
REQUEST FOR CONTINUANCE

On August 16, 2013, Student's parent filed a request for a continuance on the ground that an attorney would be willing to review the matter and possibly represent Student if Student could obtain a two week continuance. District opposed the continuance as being unsupported by good cause in light of the length of time the matter has been open and the previous opportunities for parent or the self-styled "educational consultant" hired by parent to participate in prehearing conferences, at which time scheduling could have been addressed.

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. The motion does not demonstrate good cause for further continuances. This matter has been continued once, the final prehearing conference has been conducted, and this matter is now ready for hearing.

At all times, Student was provided notice of the hearing dates, dates for prehearing conferences, and the requirements for participation in a prehearing conference and hearing. The request to continue is late, coming after the final prehearing conference and two business days before hearing. Student has had notice of the current hearing dates since the order following the prehearing conference of July 15, 2013, which Student failed to participate in. Student or a representative did not appear, despite multiple attempts by OAH, at the most recent prehearing conference on August 12, 2013. Student offers no explanation for the failure of Student's parent or Student's purported representative, self-styled "educational consultant" Victoria Baca, to participate in the prehearing conference process or respond to repeated telephone calls from OAH during the history of this matter. Student has had ample time to retain an attorney since the June 20, 2013 filing date of District's complaint and offers no explanation for the delay in seeking an attorney. At a minimum, parent should have been aware of the need for an attorney as of July 15, 2013 when "educational consultant" Victoria Baca did not appear on Student's behalf for the first prehearing conference. To the extent parent claims unavailability on the current dates, parent has had notice of the dates for over 30 days. Finally, the mere possibility that Student could obtain attorney representation at the last minute is not good cause for a continuance when the party filing the due process hearing request is ready to proceed and Student has not participated in any of the prehearing conferences.

The hearing shall proceed as scheduled on August 20, 2013 at 1:00 PM, and August 21, 2013 at 9:30 AM.

IT IS SO ORDERED.

Dated: August 16, 2013

/s/

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