

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WEST COVINA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013070381

ORDER DENYING SECOND
REQUEST FOR CONTINUANCE

On October 23, 2013, the parties filed a second stipulated request for a continuance seeking an additional five months. The request seeks hearing dates in March of 2014 on the ground that an interim settlement agreement, executed on “April 23, 2013” (a date over two months prior to the filing of the due process hearing request in this case), calls for assessments and an IEP team meeting to occur prior to March of 2014. A first continuance of 60 days was granted at a mediation conducted on August 13, 2013.

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 requested continuance, which would result in a hearing occurring nine months from the date of filing, is inherently unreasonable. Obviously troubling is the recitation that the parties entered into an interim agreement months prior to Student filing this case. Even if the “interim” agreement was executed in August of 2013, good cause was not shown for a continuance of this length. While settlement is laudable, and District is required to provide Student with an IEP that provides a FAPE going forward, all of the issues in the complaint refer to various defects with Student’s special education program dating backward two years from the date of filing. Specifically at issue: past assessments; past IEP’s (goals, services, accommodations, etc...); past IEP’s not implemented by qualified staff; past IEP’s not fully implemented; past “Hughes Bill” violations; and a past claim of retaliation. None of these allegations concern an IEP designed to be in place for the end of the 2013-2014 school year and beyond. Finally, the mere assertions that the parties agreed to assessments, unspecific assertions that the assessments were not completed, and that the parties would like to attend an IEP meeting and would like to mediate are not good cause for a continuance of this length, particularly when a mediation has already been conducted, and further mediation could be scheduled.

IT IS SO ORDERED.

Dated: October 24, 2013

/s/

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