

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013070873

ORDER DENYING SECOND
REQUESTS FOR CONTINUANCE
[11/22/13 REQUEST BY STUDENT
AND 11/25/13 JOINT REQUEST]

The hearing in this matter is scheduled to begin at 1:30 p.m. on Monday, November 25, 2013. On Friday, November 22, 2013 at 4:47 p.m., Student filed a request to continue the hearing for approximately 30 days on the ground that District's attorney did not meet and confer with Student's attorney regarding witness scheduling, as contemplated by the OAH prehearing conference order. Then, on the morning of Monday, November 25, 2013, the parties filed a joint request to continue the hearing for an additional 11 weeks, "to allow adequate time to settle the case and prevent the unnecessary incurrence of undue costs and unnecessary use of judicial resources." Both requests are denied for failure to show good cause.

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 requests for good cause and considered all relevant facts and circumstances. The requests are denied. As an initial matter, Student's request is denied as moot because it was superceded by the joint request filed the day of the hearing. Even if considered on the merits, Student's request, taken on its own, does not demonstrate good

cause. Any failure of District's attorney's to follow OAH prehearing orders is exactly the type of issue that can be addressed at hearing, as it is within the ALJ's authority to regulate the hearing and the conduct of the parties. Student has the burden of proof and approximately half the witnesses on Student's list are not District employees. If Student has followed OAH's prehearing conference order, as Student demands of District, then each of those witnesses should be ready and able to testify on the existing hearing dates. Any issues with District witnesses can be resolved at hearing, which is scheduled for seven days over a two week period, and if District's conduct is shown to have been in bad faith, or frivolous, sanctions are within the ALJ's discretion. In sum, Student's remedy for any alleged bad action by District can be obtained at hearing, not by a continuance.

Further, it is remarkable that within days, Student has taken the opposite position from that on November 22, 2013, i.e., that District and Student are now so able to work together that they will be able to settle the matter. The lack of consistency undermines both requests. Regardless, good cause is not shown by the mere assertion that after having obtained a continuance of almost 11 weeks, with an additional 11 weeks the parties might settle the matter. The parties have already been afforded a continuance of sufficient length that they have had more than ample opportunities for settlement discussions. Given that the IDEA contemplates a relatively short period of 30 days to complete informal resolution of due process issues, a request for an 11 additional weeks, coming after an initial continuance of almost 11 weeks, and without any specific factual support, does not show good cause and is facially unreasonable.

The matter shall proceed to hearing as scheduled.

IT IS SO ORDERED.

Dated: November 25, 2013

/s/

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