

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SYLVAN UNION SCHOOL DISTRICT.

OAH Case No. 2014010077

ORDER DENYING REQUEST FOR  
CONTINUANCE

On January 2, 2014, Student filed a request for due process hearing against the Sylvan Union School District. The hearing dates on the matter have been continued twice. The second continuance order, dated April 28, 2014, set this matter for hearing on August 19, 2014, and informed the parties that no further continuances would be granted.

On August 6, 2014, the Office of Administrative Hearings granted Student's request to amend his complaint and, pursuant to the Individuals with Disabilities Education Act, the 45-day time line for rendering a written decision was reset. (20 U.S.C. §1415(c)(2)(E)(ii).) On September 8, 2014, the parties filed a request to continue the dates in this matter asserting that because Student amended his complaint, the request for continuance should be treated as an initial request for continuance, as opposed to a third request for continuance.

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. All prehearing conference and hearing dates are confirmed and shall proceed as calendared. This original complaint in this matter was filed on January 2, 2014, and the parties are now requesting hearing dates in December 2014. If the request was granted, a written decision in this matter would issue over a year from the date of the filing of the original complaint. Such a lengthy delay does not comply with the speedy resolution mandate of the IDEA.

The parties' contention that the request for continuance be treated as an initial request because Student amended his complaint is not persuasive. If OAH followed the parties' recommendation, a case could conceivably continue on indefinitely as long as the parties continued to agree to repeated amendments to the complaint.

The procedural history of this case clearly goes against the speedy resolution mandate of the IDEA. The complaint was filed on January 2, 2014. The parties sought a continuance in February 2014, which was granted. They then sought a second continuance in April, 2014, which was also granted. On August 5, 2014, Student moved to amend his complaint, which OAH granted on August 6, 2014. The new claims raised by the Student, thus necessitating an amendment, concern disputes over a May 13, 2014 individualized education program offer by the Sylvan Union School District. Student's counsel was aware of the dispute since May 13, 2014, but failed to amend the complaint until August 5, 2014, three days short of the prehearing conference of August 8, 2014. The amended complaint contains allegations that there are additional assessments of Student that Sylvan has not reviewed in an IEP team meeting, and will not do so until the start of the 2014-2015 school year. Therefore, it is foreseeable that further disputes will arise between the parties and Student will be moving to amend his complaint again. The procedural history of this case raises concerns that the parties are not making reasonable efforts to timely prosecute this case. Accordingly, the request to continue is denied.

IT IS SO ORDERED.

DATE: September 9, 2014

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