

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011080557

ORDER DENYING THIRD REQUEST
FOR A CONTINUANCE

On February 7, 2012, the parties filed their third request for a continuance. The reason given was that the parties entered an interim agreement on November 23, 2011 to perform certain assessments, which to date have not been started based on the chosen assessor's availability.

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); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

OAH has reviewed the request for good cause and the request is denied. Here, at the time the parties made a second request for a continuance on November 14, 2011, they represented that "an interim agreement was reached, and as a result both a comprehensive psycho-educational assessment and an assistive technology assessment are being conducted." The only interpretation of this representation was that as of November 14, 2011, there was a firm interim agreement and the assessments were already underway and would be completed within the time requested by the parties. The parties now state that an interim agreement was reached *after* the second continuance was granted on November 15, 2011, and that a psycho-educational assessment had not even been started. The third continuance request fails to explain the discrepancy between what was represented to OAH for the second continuance and what the parties are now stating. Given the discrepancy and lack of explanation, there is a strong inference that the parties had not actually entered an interim agreement and arranged for assessments at the time the second continuance was granted.

Even if there was no discrepancy between what the parties have represented to OAH, good cause for a third lengthy continuance has not been shown. As of November 15, 2011, the parties were warned that further continuances to conduct assessments would not be granted. However, the parties now state that despite that clear notice, they entered an

agreement to conduct assessments after the continued hearing dates that they had requested, and been granted, on November 15, 2011. Having been provided notice, there is no good cause for not completing the assessments in the time provided by the second continuance. This is particularly true when given the IDEA's 45-day timeline, it is presumed that Student was prepared for hearing at the time the complaint was filed. Further, while settlement is laudable, the parties have now had more than ample time to do so, and assessments performed seven months after the complaint was filed are of far less relevance at hearing than what was known at the time of the IEP at issue. Thus, for the reasons set forth above, the third continuance request is denied. The hearing shall proceed as calendared.

IT IS SO ORDERED.

Dated: February 07, 2012

/s/

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