

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MANHATTAN BEACH UNIFIED  
SCHOOL DISTRICT.

OAH CASE NO. 2012110640

ORDER ON DISTRICT'S MOTION TO  
RESET TIMELINES GRANTING  
DISTRICT'S REQUEST FOR A  
CONTINUANCE

Student filed the complaint in this matter with OAH on November 20, 2012. In the complaint, Student declined mediation and indicated that Student wanted to proceed to hearing. Student's proof of service indicates the complaint was served on District by regular mail the same day. November 22, 2012 was a national holiday, and November 23, 2012 was also a state holiday.

On November 29, 2012, District filed a letter with OAH, which requested that the hearing dates be reset. Specifically, District stated that they received the OAH scheduling order on November 27, 2012, and Student's complaint on November 28, 2012. District's letter requested that the hearing dates be vacated and that all timelines be reset as of the date district received the complaint, rather than the date it was filed with OAH. District's letter did not contain a proof of service indicating it had been served on Student, and no response was received from Student.<sup>1</sup>

*Request to Reset Timelines*

Because Student indicated they did not want to mediate, the OAH scheduling order set the prehearing conference 30 days from the November 20, 2012 filing date, and not 30 days from the date District actually received the complaint. Although District provided no reason for its request to reset dates, it can be inferred that District is concerned that as scheduled, there is insufficient time to conduct the mandatory resolution session, which under most circumstances must be completed within a maximum of 30 days from the time a school district receives a complaint. (Ed. Code, § 56505, subd. (f)(3).)

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<sup>1</sup> District apparently believed this was a permissible ex-parte communication because it was strictly procedural. However, District should have served the request on Student, like it would be required to do for any other matter impacting scheduling. Further, District fails to explain why it did not meet and confer with Student regarding mutually agreed dates prior to filing with OAH. Despite the above, OAH is ruling on the motion to provide clarity to the parties given the short time frame. Should Student disagree with the result, Student may file a motion for reconsideration on the ground Student did not receive notice of the request.

District has not demonstrated any reason to reset the date the decision was filed. District is correct that the IDEA requires that a petitioning party file a due process hearing request (complaint) with the OAH (for the Superintendent of Public Instruction), and “shall provide the other party to the hearing with a copy of the request at the same time as the request is filed. . . .” (See Ed. Code, § 56502, subd. (c)(1).) However, IDEA does not specify that a respondent actually receive the complaint on the same day as it is deemed filed, nor does IDEA specify the method of delivery. Accordingly, where, as here, the Student filed a complaint, and served the District by mail the same day, Student has complied with Education Code section 56502, subdivision (c)(1). This result would not change District’s timeline to file an NOI, which would be calculated from the date of *receipt* of the complaint, rather than the date of filing. (See Ed. Code, § 56502, subd. (d)(1).) Similarly, the timeline for conducting a resolution session is determined by the date a complaint was received by the respondent, not filed. (See Ed. Code, § 56501.5, subd. (c).) In light of the above, District’s motion to consider its date of receipt as the date of filing is denied.

### *Continuance*

Although the filing date need not be changed, District’s motion demonstrates that as scheduled, District would have difficulty completing a resolution session because there was less than 30 days from the date of receipt of the complaint until the prehearing conference and hearing. Accordingly, District’s motion to reset all timelines as if the complaint had been filed on November 28, 2012, can be interpreted as a request to continue the hearing dates so that the District has at least 30 days from November 28, 2012 in which to conduct a mandatory resolution session.

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).)

As demonstrated in the discussion above, as scheduled, District has insufficient time to complete a resolution session. Accordingly, there is good cause for a continuance. The matter will be continued so that the prehearing conference and hearing are scheduled after December 28, 2012, which is 30 days after the District received the complaint. The matter shall be continued to the following dates:

Telephonic prehearing conference:                      January 2, 2013 at 1:30 PM

Due Process Hearing    January 8-10, 2013 at 9:30 AM

IT IS SO ORDERED.

Dated: December 05, 2012

/s/

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