

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. 2013070167

ORDER GRANTING IN PART,
DENYING IN PART, REQUEST FOR
CONTINUANCE AND SETTING
PREHEARING CONFERENCE AND
DUE PROCESS HEARING

On September 19, 2013, the parties filed a second stipulated request to continue the dates in this matter. Student's due process hearing request (complaint) was filed on July 1, 2013, and based upon a stipulation between the parties, continued on August 2, 2013, to October 7, through October 10, 2013. The parties requested a second continuance based in part upon the admitted neglect of Student's counsel to calendar the matter so as not to conflict with another due process proceeding scheduled in a consolidated matter for the same dates. The schedule for the consolidated matter was set prior to the time the parties stipulated to the continuance in this matter. The parties are scheduled to mediate the matter on September 24, 2013. The parties request that the prehearing conference be continued to October 28, 2013, and the due process hearing to November 11, through November 12, 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. Based upon the timing of the first continuance, Student's counsel knew for months that a scheduling conflict existed with this case and the consolidated matter but failed to bring it to OAH's attention earlier. While there currently exists a scheduling conflict with the consolidated matter, counsel's representation that there are other "OAH and hearing-related commitments" that prevent setting a hearing prior to November 12, 2013, is vague and unsubstantiated. For this reason, the request for a continuance is granted, but is denied for the dates requested.

Granted in part. All dates are vacated. The matter is set as follows.

Mediation [Unchanged]: September 24, 2013

Prehearing Conference: October 21, 2013, 1:00 p.m.

Due Process Hearing: October 28, 2013, 1:30 p.m., October 29 and 30, 2013, 9:30 a.m. and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

IT IS SO ORDERED.

Dated: September 20, 2013

/s/

EILEEN COHN
Administrative Law Judge
Office of Administrative Hearings