

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VICTOR ELEMENTARY SCHOOL
DISTRICT.

OAH CASE NO. 2013070285

ORDER GRANTING REQUEST FOR
CONTINUANCE AND SETTING
PREHEARING CONFERENCE AND
DUE PROCESS HEARING

On August 7, 2013, District filed its first request to continue the dates in this matter. On August 13, 2013, Parent on behalf of Student (Student) responded to District's request to continue the dates in this matter, agreeing with District that the dates should be continued, but disagreeing with the dates proposed by District. On August 15, 2013, District responded to Student's proposed dates, stipulating to the dates Student proposed for the prehearing conference (PHC) and due process hearing (DPH), but opposing Student's proposed mediation date, which differed from the mediation date the parties had previously agreed to during their resolution meeting.

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. Student's proposed dates consider the time the parties need to participate in an Individualized Education Program (IEP) meeting which parent hopes will resolve the Student's due process hearing request, or alternatively, time to set a mutually agreeable

mediation date, and time for Parent to secure counsel, complete her college course work, and ensure that she can secure the appearance of necessary witnesses.. The request is:

Granted. All dates are vacated. The continuance is effective the date of this Order. This matter is set as follows:

Mediation: [Mediation is voluntary and subject to mutual agreement. The parties are encouraged to identify a mutually agreeable date and file a request with OAH at least seven working days before the mediation to ensure the availability of a mediator. OAH will not set the mediation after the prehearing conference.]

Prehearing Conference: November 1, 2013, at 1 p.m. [Conducted telephonically. The parties are required to timely provide OAH with phone numbers where they can be reached and, on the day of the PHC, remain available for the telephonic appearance beginning at 1 p.m., and continuing until the PHC is concluded. The scheduling order served on the parties with the initial hearing dates sets forth the requirements of the PHC, including the filing of PHC statements.]

Due Process Hearing: Thursday, November 14, 2013, Tuesday, November 19, 2013, Wednesday, November 20, 2013, and Thursday, November 21, 2013, at 9:30 a.m. through 5 p.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. [Thursday, November 21, 2013, was added to provide the parties notice that the DPH will continue, if necessary, that week. The DPH will also continue day to day, beginning the next week, at the discretion of the ALJ. The parties have been granted a generous continuance and given the statutory timelines are hereby notified that any further continuance requests will be met with disfavor, and that counsels' (existing or newly retained) or advisors' schedules, Parent's college coursework, or anything other than exigent circumstances, shall not be considered good cause grounds for further continuances. The parties are further notified that the hearing shall s be full day.]

IT IS SO ORDERED.

Dated: August 16, 2013

/s/

EILEEN M. COHN
Administrative Law Judge
Office of Administrative Hearings