

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

TORRANCE UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2013090507

ORDER DENYING THIRD REQUEST
FOR CONTINUANCE

On January 21, 2014, the parties filed a third request for a continuance. The second continuance in this matter had been granted to give the parties additional time to complete assessments related to settlement negotiations and hold an IEP team meeting. The second continuance included a mediation date, which the parties subsequently cancelled. At the time the second request was granted, the parties were advised that further continuances were not contemplated, particularly on the ground that assessments had not been completed and/or that the parties cancelled mediation. The parties now are seeking a continuance of over 90 days, to hearing dates on May 12-15, 2014, on the unexplained assertion that assessments they want to conduct and an IEP team meeting they want to schedule have been delayed.

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. District filed this case on the sole issue of whether an IEP offer made in April of 2013 provided a free appropriate public education, in particular, the offered placement. While settlement is laudable, and mediation is always available, District's issue does not require additional assessments to proceed to hearing, as the legal standard that is applied looks to whether the offer was reasonably calculated to provide a free appropriate public education based on what District knew about Student at the time. More importantly, the third continuance request is inherently unreasonable, as it would result in the hearing taking place over a year from the date of the IEP at issue, such that District would already be obligated to have developed a new annual IEP in April of 2014. The IDEA's 45-day hearing timeline does not contemplate the absurd result of continuances being granted until the IEP at issue is no longer current when District has a present obligation to provide Student an appropriate program. No further continuance requests will be considered.

IT IS SO ORDERED.

Dated: January 22, 2014

/s/

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