

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TUSTIN UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2014020628

ORDER DENYING REQUEST FOR  
CONTINUANCE AND ORDERING  
STUDENT TO FILE PREHEARING  
CONFERENCE STATEMENT

On April 4, 2014, Student filed a request to continue the dates in this matter. As set forth below, the request is denied.

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).) The Office of Administrative Hearings 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. The prehearing conference in this matter is set for April 7, 2014. Student has not filed a prehearing conference statement apparently on the belief that this request to continue will be granted. Such conduct interferes with OAH's ability to timely advance this matter. As set out below, Student is ordered to

file a prehearing conference statement. Similar conduct by Student's counsel in the future may result in an order to show cause being issued and counsel being ordered to pay OAH's expenses.

Student asserts that the parties have agreed upon assessments and an individualized education program team (IEP) meeting to review those assessments. Student contends that the assessments and the IEP team meeting may resolve this matter without need for a hearing. The assessments are set to be completed, and the IEP team meeting held by, May 3, 2014. However, Student requests that this matter be continued into September 2014 and possibly October 2014. Student's contention is that counsel is set for other OAH hearings such that counsel is unavailable for hearing prior to September 2014. Student further asserts that counsel has met and conferred with counsel for the Tustin Unified School District (Tustin) and while Tustin agrees to a continuance, the parties could not arrive at mutually agreeable dates. Regardless of whether Tustin agrees or opposes the continuance request, Student has failed to establish good cause for such a lengthy continuance.

Special education matters frequently settle prior to hearing; therefore, counsel's potential conflicts in due process hearings that have not yet commenced is not good cause for a continuance. Furthermore, what Student requests would place a decision in this matter more than eight months from the date of filing of this hearing request. Such a lengthy continuance is not in keeping with the speedy resolution mandate of the Individuals with Disabilities Education Act. Accordingly, the request is denied.

Student's counsel is ordered to file a prehearing conference statement by 10:00 a.m. on April 7, 2014. The parties may renew the request to continue if they can propose dates within 90 days of the initial hearing date in this matter.

IT IS SO ORDERED.

DATE: April 4, 2014

/s/

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BOB N. VARMA  
Presiding Administrative Law Judge  
Office of Administrative Hearings