

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BONITA UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2014030697

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

Student filed a request for due process hearing only on March 17, 2014. On March 20, 2014, Student filed a unilateral request for continuance, which the Office of Administrative Hearings denied without prejudice on March 26, 2014. On April 4, 2014, District filed a motion to dismiss the complaint on the ground that Parent had not participated in a mandatory resolution session. On April 7, 2014, Student timely filed a response to District's motion and renewed her request for a continuance. On April 8, 2014, OAH issued an order denying Student's request for continuance as moot, denying District's motion to dismiss, and resetting timelines to allow time for a resolution session. On April 10, 2014, Student filed a request for continuance and for conflict resolution. District did not respond. On April 13, 2014, Student filed a notice regarding resolution session and requested a continuance. District did not respond.

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)¹; 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

¹ All references to the Code of Federal Regulations are to the 2006 edition.

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).)

A local educational agency (LEA) is required to convene a meeting with the parents and the relevant members of the Individualized Education Program team within 15 days of receiving notice of the Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1).) The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation. (34 C.F.R. § 300.510(a)(3).) If the parents do not participate in the resolution session, and it has not been otherwise waived by the parties, a due process hearing shall not take place until a resolution session is held. (34 C.F.R. § 300.510(b)(3).) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the LEA may, at the conclusion of the 30-day period, request that an administrative law judge dismiss the complaint. (34 C.F.R. §300.510(b)(4).) If the LEA fails to hold the resolution meeting within 15 days of receiving notice of the due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of an administrative law judge to begin the due process hearing timeline. (34 C.F.R. §300.510(b)(5).)

DISCUSSION

In this case, Mother filed a due process complaint on March 17, 2014, and almost immediately requested a continuance of the hearing until July because of her unavailability and unavailability of witnesses. District unilaterally set a date for a resolution session by mailing a notice of the date to Mother. The date was not convenient for Mother, Mother did not appear, and District moved to dismiss the matter without making reasonable attempts to contact her about mutually agreeable dates. In the interim, Mother filed her unilateral requests for continuance explaining that she had conflicting family court dates that prevented her from being available for a resolution session from April 18, 2014, until after April 25, 2014.

OAH issued its order on April 8, 2014, in which it reset the timelines, ordered the parties to meet and confer within three business days, and to convene a resolution session within 14 days. OAH issued a new scheduling order in which it set mediation on April 23, 2014, a prehearing conference on May 5, 2014, and due process hearing on May 14, 2014.

Mother's filings on April 10 and April 13, 2014 established that she attempted to meet and confer with a District representative pursuant to the April 8, 2014 order, that she requested a date for resolution after the 14-day period because of family court conflicts, and that District refused to offer a date after April 25, 2014. Instead, District unilaterally set the date of April 18, 2014, again without conferring with Mother about availability. Mother responded by informing District that she was obligated to be in a family court hearing on that date and could not attend.

District has offered no showing as to why it could not have made reasonable attempts to set a date for a resolution session that was convenient for all parties, even if after the 14-day period. District has also not offered any explanation why it could not have conferred with Mother and filed a joint request for continuance based on the date for the resolution session with dates agreed upon by the parties, or explaining that the parties could not agree on new dates. Instead, District has remained silent and has not filed any response to Mother's requests for continuance filed with OAH, except seeking dismissal of her complaint for failure to participate in a resolution session.

It is found that District did not make reasonable efforts to hold a resolution session with Mother, Mother has demonstrated good faith efforts to schedule a resolution session in compliance with OAH's April 8, 2014 order, she has shown good cause why the due process hearing timelines should begin without a resolution session, and a continuance of the hearing dates should be granted based upon Mother's family court commitments in April. Mother's motion will be granted and the hearing timeline shall proceed pursuant to 34 C.F.R. §300.510(b)(5).

ORDER

1. The due process hearing timelines shall begin as of the date of this order pursuant to 34 C.F.R. §300.510(b)(5).

2. The due process hearing currently set for May 14, 2014, is continued for good cause. The new dates are:

Prehearing conference: July 25, 2014 at 1:00 P.M. The parties shall timely file prehearing conference statements as specified in the original scheduling order issued by OAH.

Due Process Hearing: August 5, 2014, beginning at 9:30 a.m. and continuing day to day Monday through Thursday as needed, at the discretion of the ALJ.

3. If the parties want a mediation date, they shall meet and confer on a mutually agreeable date and jointly file a written request for mediation with OAH.

DATE: April 16, 2014

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings