

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WEST COVINA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014050145

ORDER DENYING JOINT REQUEST
FOR CONTINUANCE OF
PREHEARING CONFERENCE AND
DUE PROCESS HEARING

On August 14, 2014, Student and West Covina Unified School District (District) filed a stipulation to continue the mediation, prehearing conference (PHC) and hearing in this matter (Stipulation). The Stipulation will be treated as a joint request for continuance of the PHC and hearing dates, and a request for mediation.

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 PHC and hearing dates are confirmed and shall proceed as calendared. Good cause for the continuance has not been shown, and the requested mediation is for a date after the hearing is currently scheduled to begin.

Student's due process hearing request (complaint) was filed on April 30, 2014. At the joint request of the parties, by orders dated June 12, 2014, the PHC and hearing were rescheduled to dates chosen by the parties, September 5, 2014 and September 18-19 and 22-23, 2014, respectively. No new mediation date was requested.

The Stipulation seeks to delay the hearing to December 2-4, 2014, more than seven months after Student's complaint was filed. The reason given is that the parties have reached an interim agreement to hold an individualized education program (IEP) team meeting on September 17, 2014, to review assessments and develop an IEP for Student, and they would like to mediate after the meeting. However, District's obligation to review post-filing assessments and offer Student a free appropriate public education (FAPE) at the upcoming IEP team meeting has no bearing on the past District conduct alleged in Student's complaint. Student's complaint also alleges denials of FAPE for three years and beyond, making time of the essence in bringing this matter to hearing. The Stipulation's references to an incomplete resolution of issues and future IEP team meetings do not establish good cause for continuance of the hearing in this matter.

The Stipulation also fails to show good cause because the parties' desire to attend the IEP team meeting and mediate can be accommodated while still preserving currently scheduled hearing dates. If the parties requested that the hearing go dark on September 17-18, 2014, for the parties to attend the IEP team meeting on September 17, 2014, and mediate on September 18, 2014, the hearing would then proceed as scheduled on September 22, 2014, if the matter was not resolved by a final agreement. No continuance of the PHC would be required. The parties may re-submit a request for continuance seeking to have the hearing go dark, and assignment of a mediator, as discussed above.

IT IS SO ORDERED.

DATE: August 14, 2014

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings