

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

KENTFIELD SCHOOL DISTRICT.

OAH Case No. 2015070101

ORDER DENYING REQUEST FOR
CONTINUANCE

On November 2, 2015, the parties filed a joint third request to continue the dates in this matter. The parties request a third continuance because they have recently completed assessments and begun what they call individualized education program “planning relevant to issues related to 2015-16.” The parties wish to continue the IEP development process and the parties cannot meet again until November 20, 2015. The parties have requested another mediation be scheduled on December 15, 2015, which is currently scheduled as the first day of hearing in this matter. The parties then note that they have stipulated to file an amended complaint prior to the mediation they want scheduled. The parties want a hearing scheduled for 60 days after December 15, 2015, to “avoid multiplicity of cases and unnecessary hearing costs.”

This matter was filed on June 19, 2015. The parties first requested a continuance on July 21, 2015. At that time the parties could not agree on hearing dates and asked the Office of Administrative Hearings to set dates. The hearing was set for October 6 and 7, 2015, almost 60 days from the initial hearing date. On September 11, 2015, the parties filed a second joint request for continuance. At that time, the parties stated that they were completing assessments and IEP planning relevant to the issues related to the 2015-2016 school year. They asked for mediation on November 10, 2015 and hearing approximately 30 days later. The request was granted and the hearing was scheduled to begin on December 15, 2015.

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. This matter has already been continued twice. The parties are now asking for a continuance to allow them hold another IEP team meeting, which will apparently form the basis for new issues to be raised in an amended complaint. This matter was filed on June 19, 2015. To the extent that issues were raised regarding the 2015-2016 school year in the complaint, those issues are limited to IEP offers and /or other alleged procedural and substantive violations which occurred prior to the filing of the complaint. Any IEP team meeting held after the complaint was filed is not at issue in this matter. While sometimes a short continuance is warranted to allow parties to hold an IEP team meeting, if that meeting will help resolve issues between the parties, ongoing continuances to allow the parties to continue to accrue claims against one another simply violate the mandate for speedy resolution of issues and could result in hearings with an unwieldy amount of school years at issue. Further, if the parties keep amending to add every new issue that crops up after filing, cases would never ripen for hearing. In this case, the parties would like a continuance to a “phantom” mediation and hearing dates to effectively take the matter “off calendar” while the parties wait to have meetings which will form the basis for more claims. For these reasons, the motion to continue is denied.

IT IS SO ORDERED.

DATE: November 2, 2015

/s/

MARGARET BROUSSARD
Presiding Administrative Law Judge
Office of Administrative Hearings