

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015090956

ORDER GRANTING DISTRICT'S
MOTION FOR CONTINUANCE AND
SETTING MEDIATION, PREHEARING
CONFERENCE, AND HEARING

On October 16, 2015, Pasadena Unified School District filed a motion to continue the dates based upon the unavailability of District's attorney. On October 16, 2015, Student filed a response.

APPLICABLE LAW

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. (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).)

34 Code of Federal Regulations part 300.500(b)(2) states that the timeline for issuing a final due process decision (the 45 days) begins at the expiration of the 30-day resolution period, except as provided in paragraph (c). Paragraph (c) does not provide for extension of the resolution period by way of the parties' stipulation or an order.

DISCUSSION AND ORDER

Here, counsel for the parties discussed and agreed upon dates for continuation of the mediation, prehearing conference, and hearing, which included accommodating the availability of Student's expert witnesses.

However, as a condition to jointly stipulating to the dates, Student's counsel wanted District to stipulate that the 30-day resolution period (34 C.F.R. § 300.510) be extended, that the resolution period conclude – and the 45 days begin to run – on the parties' agreed upon mediation date, and that the stipulation would state Student would not be "waiving the right to a hearing 45 calendar days after the resolution period." District's attorney expressed concern regarding the Student's conditions to a joint stipulation, deciding to file a motion to continue or, alternatively, obtain a calendar setting conference.

Student acknowledges that the IDEA and supporting regulations do not specifically provide that parties may stipulate to extend the 30-day resolution period, thus affecting the running of the 45-day decision timeline. Yet, Student requests such a provision because Student is concerned that a final decision would be unduly delayed. Student's request that the continuance order include an extension of the resolution period is inappropriate.

Therefore, the issue is whether District has demonstrated good cause for the request of a brief, first continuance. District's counsel has established she is unavailable for the presently scheduled hearing of November 10, 2015. District's counsel communicated with Student's attorney and agreed upon continuation dates, which included accommodating the availability of Student's expert witnesses. Considering all relevant facts and circumstances, District has demonstrated sufficient good cause for the continuance request. Accordingly, District's motion is granted, all dates are vacated, and the matter is continued as follows:

Mediation:	October 29, 2015, at 9:30 AM, at District's offices, 351 South Hudson Avenue, Room 227, Pasadena, CA 91109.
Prehearing Conference:	November 30, 2015, at 1:00 PM.
Due Process Hearing:	December 9, 10, 15, 16, and 17, 2015, at 9:30 AM the first day, and 9:00 AM each additional day, continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. The hearing shall take place at District's offices, 351 South Hudson Avenue, Room 227, Pasadena, CA 91109.

IT IS SO ORDERED.

DATE: October 20, 2015

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings