

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

EUREKA UNION SCHOOL DISTRICT.

OAH CASE NO. 2013010321

ORDER DENYING REQUEST FOR  
CONTINUANCE

On January 9, 2013, Student filed a request for due process hearing (complaint) against the Eureka Union School District (District). On February 22, 2013, at the request of the parties, the Office of Administrative Hearings (OAH) granted the parties a continuance. On May 7, 2013, the parties requested a second continuance on the grounds that independent educational evaluations that they had agreed upon in February 2013 had not been completed and the parties had not been able to hold an individualized education program team meeting. On May 8, 2013, OAH granted this second request and set this matter for hearing in September 2013, as requested by the parties. On August 28, 2013, the parties filed a third request for continuance.

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. Student's complaint alleges claims against District that can be generally separated into three categories: failure to assess Student; denial of a free appropriate public education (FAPE) due to procedural violations of the Individuals with Disabilities Education Act; and, substantive denials of a FAPE. All claims concern school years from 2010-2011 through 2012-2013, including the extended school year of 2013. The time period challenged in Student's complaint has now expired, and any remedy Student would be entitled to is necessarily compensatory in nature.

The parties' current request for a continuance is based upon an agreement to place Student in a diagnostic placement and a desire to wait and determine whether that placement is successful. In essence the parties' request this matter be placed on hold while they develop and implement a placement that may provide Student with a FAPE for the 2013-2014 school year, a time period not at issue in this case. The parties request the due process hearing in this matter be continued to January 27, 2014, making the case over a year old when it reaches hearing. It is reasonably foreseeable that should the parties not agree on whether Student's current placement provides a FAPE, Student will move to amend the complaint to add the 2013-2014 school year, thus resetting the time lines and further delaying this matter. The grounds that the parties have provided for their third continuance request do not constitute good cause and the request is denied.

IT IS SO ORDERED.

Dated: August 29, 2013

/s/

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