

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BALDWIN PARK UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013050637

ORDER DENYING STUDENT'S
REQUEST FOR CONTINUANCE

On August 21, 2013, Parent and Student (collectively, Student) filed a request to continue the prehearing conference and due process hearing dates in this matter, based upon the fact that Student has recently enrolled in another school district and is undergoing assessment by the new school district. The assessment will be completed in approximately 75 days. On August 22, 2013, the Baldwin Park Unified School District (District) opposed the request on the grounds that it was not supported by good cause. On August 22, 2013, Student filed a reply in support of the request, which essentially reiterated the arguments in Student's request. There is no legal provision for the filing of a reply, and Student should not rely upon an ALJ considering a reply memorandum unless Student has obtained permission from OAH to file a reply. No such permission was sought or granted here.

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).)

Denied. All prehearing conference and hearing dates are confirmed and shall proceed as calendared. Student has not shown good cause to support a continuance. In this case, the potential discovery of new evidence cannot constitute good cause. In view of the “snapshot rule” and other applicable legal principles, the relevance of the new assessment may be narrower than Student assumes. Additionally, this matter has already been continued once, pursuant to a joint request of both parties, and, as is discussed above, continuances of due process hearings are disfavored.

If Student wishes, Student may dismiss this case without prejudice prior to the commencement of the hearing and file another complaint when Student obtains the results of the new assessment. Student, however, must be mindful as to whether such a new complaint would be barred by the statute of limitations.

IT IS SO ORDERED.

Dated: August 23, 2013

/s/

ELSA H. JONES
Acting Presiding Administrative Law Judge
Office of Administrative Hearings