

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LAS VIRGENES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013110490

ORDER DENYING MOTION TO
RESET TIMELINES AND GRANTING
MOTION TO CONTINUE

Student filed a request for due process (complaint) naming Las Virgenes Unified School District (LVUSD) with the Office of Administrative Hearings (OAH) on November 14, 2013. Student did not serve LVUSD with the complaint. On December 2, 2013, OAH provided LVUSD with a copy of the complaint and a scheduling order, based upon the date the complaint was filed. On November 12, 2013, LVUSD filed a motion to reset the timelines in this matter, or alternatively requesting a continuance of the hearing dates. The motion was supported by declarations under penalty of perjury establishing facts. On December 13, 2013, Parent on Student's behalf filed an opposition to District's motion in which she opposed any continuance. On December 13, 2013, LVUSD's counsel filed a supplement to the motion clarifying District's alternative request for a 15 day continuance of the due process hearing to January 22, 2014. The initial due process hearing date had been set for January 7, 2014, the date it would have occurred under OAH scheduling guidelines had LVUSD been timely served with the complaint.

APPLICABLE LAW

The party who initiated the due process hearing request is required to provide the respondent with a copy at the same it is filed. (Ed. Code, § 56502, subd. (c)(1).) A local educational agency (LEA) is required to convene a meeting with the parents and the relevant members of the Individualized Education Program (IEP) team within 15 days of receiving notice of the Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1) (2006).) If the parents do not participate in the resolution session, and it has not been otherwise waived by the parties, a due process hearing shall not take place until a resolution session is held. (34 C.F.R. § 300.510(b)(3) (2006).) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the complaint. (34 C.F.R. §300.510(b)(4) (2006).)

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).)

DISCUSSION

Motion to Reset

District asks OAH to reset timelines in this matter because, although Parent filed the complaint with OAH on November 14, 2013, she did not serve it on the LVUSD and therefore District did not have notice of the complaint until December 2, 2013, when OAH provided a courtesy copy of the complaint to LVUSD. However, LVUSD timely held a resolution session with Parent on December 10, 2013. OAH may consider resetting timelines to afford an LEA the opportunity to hold a resolution session where a Parent refuses to participate in or to waive a resolution session within the statutory 30-day time period. However, here, Parent and LVUSD participated in a resolution session within eight days after LVUSD received notice of the complaint. Accordingly, no basis exists for resetting the timelines. The motion to reset timelines is denied.

Request for Continuance

In the alternative, LVUSD seeks a short continuance of the hearing dates to January 22, 2013, because it is closed for the winter holiday break for 16 days, from December 21 through January 5, 2013, leaving little to no time to adequately prepare for hearing. LVUSD contends that, because it received the complaint 15 days after Parent filed it with OAH, thereby losing 15 days of preparation time, it would suffer prejudice if it must start hearing one day after its staff return from a two-week winter break. Mother opposes any continuance of the hearing dates.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances and the request is granted. LVUSD's request for a 15-day continuance is reasonable, particularly when it is no longer than the delay between the time parent filed and LVUSD received notice of the due process hearing request. Good cause is shown both by the loss of preparation time and by LVUSD school holidays occurring during the remaining

preparation time. Accordingly, all dates are vacated and the matter will be continued to the dates requested by LVUSD.

ORDER

1. LVUSD's motion to reset dates is denied.
2. LVUSD's motion for a continuance is granted.
3. Mediation shall take place on December 17, 2013 at 9:30 a.m.
4. All other dates are vacated.
5. The telephonic prehearing conference shall take place on January 10, 2014 at 10:00 a.m.
6. The hearing shall take place on January 22-23, 2014 at 9:30 AM first day, 9:00 AM other days, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

Dated: December 13, 2013

/s/

RICHARD T. BREEN
Presiding Administrative Law Judge
Office of Administrative Hearings