

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2014040265

ORDER DENYING SECOND  
REQUEST FOR CONTINUANCE

Student filed a Request for Due Process Hearing (complaint) on April 7, 2014. OAH granted the parties' joint request for a continuance on May 9, 2014. On July 18, 2014, OAH granted a stipulated motion to amend the complaint. The amended complaint was filed July 18, 2014, and a due process hearing was set for September 17, 2014. On July 30, 2014, OAH granted the parties' joint request for a continuance and the due process hearing was continued to agreed dates in October 2014. On September 2, 2014, the mediation was continued to October 14, 2014; the prehearing conference (PHC ) was continued to November 3, 2014; and the due process hearing was continued to November 17 through 20, and November 24 through 25, 2014. On October 10, 2014, the scheduled mediation was cancelled at Student's request. On October 29, 2014, Student filed a "Second Request to Continue Mediation and Due Process Hearing Dates." Student requests mediation on December 17, 2014, and to continue the (PHC) to January 23, 2015 and the due process hearing to February 3, 4, 5, 9, and 10, 2015. The request is supported by a declaration from Ben Conway, Student's counsel.

The reasons for the continuance set forth in Mr. Conway's declaration are as follows: Student contracted with UCLA for an independent assessment of Student on August 25, 2014. Student learned on October 9, 2014, that this assessment would not be complete by October 14, 2014. The assessment results were reported to Student on October 22, 2014, and Student emailed District that day. Although Mr. Conway later learned he had not actually attached the report to his email, he spoke to District and emailed the report to District on October 27, 2014. Student is scheduled to visit a nonpublic program suggested by UCLA on October 30, 2014.

Mr. Conway represents that District does not oppose the motion and he has "discussed mutually agreeable proposed dates" including the requested dates with District. The only explanations offered for the dates requested are that Student would like another mediation based upon the information obtained from the UCLA assessment, and although the parties attempted to agree upon dates earlier than those requested, the parties are "frustrated by the holidays, OAH's in-service trainings the week of January 26, 2015," District's closure

from December 22, 2014 to January 12, 2015, and the Martin Luther King, Jr., holiday on January 19, 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).)

The reasons given do not constitute good cause for a delay of approximately 5 months from the initial hearing date based on the amended complaint and 10 months from the original filing. The parties have participated in a resolution session and two mediations. The parties are represented by experienced counsel. Nothing precludes them from attempting to settle this matter between now and the PHC or due process hearing. Alternatively, at the prehearing conference, the parties may request that the first day of hearing go dark so that a mediation may be held instead of the hearing on that day. The hearing would proceed on the next day if necessary. There is no good cause for a continuance of the extraordinary length requested. Blanket assertions of "frustration" due to upcoming holidays or OAH trainings that have been on the public calendar for months, or the unavailability of District personnel over the winter break, are not good cause. The IDEA does not provide that due process hearings are suspended during school breaks; witnesses may be subject to subpoena if necessary. The request for continuance is denied. All prehearing conference and hearing dates are confirmed and shall proceed as calendared.

IT IS SO ORDERED.

DATE: October 29, 2014

/s/  
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MARIAN H. TULLY  
Administrative Law Judge  
Office of Administrative Hearings

