

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL  
DISTRICT.

OAH Case No. 2014060666

ORDER DENYING REQUEST FOR  
CONTINUANCE

On October 1, 2014, the Oakland Unified School District filed a request to continue the dates in this matter on the grounds that the parties were requesting an opportunity to participate in mediation before proceeding to a hearing. Attached to the request by Oakland was an email from Student's counsel stating a non-opposition to Oakland's request. Accordingly, the request is considered a joint request.

This matter was filed on June 10, 2014. The Office of Administrative Hearings set mediation in this matter on July 15, 2014. The parties canceled the mediation. On July 24, 2014, OAH granted the parties' first request for continuance, which set mediation, at the request of the parties, on September 9, 2014. The parties canceled that mediation as well. Now the parties move to continue dates so they can participate in mediation. The parties have been given two opportunities and have failed to take advantage of either opportunity. OAH is concerned as to the genuineness of the parties' current request. As further cause for concern, OAH notes that the parties failed to provide OAH with any proposed dates for their requested mediation and continuance of the hearing; and, failed to provide any explanation of why they could not participate in the two prior mediations.

On October 1, 2014, shortly before the close of business David R. Mishook, attorney for Oakland, filed a letter with OAH, informing OAH that the parties did not intend to timely file their prehearing conference statements because they were intending to wait to see the outcome of their request for continuance. The prehearing conference in this matter is currently set for October 6, 2014, and the parties' prehearing conference statements were due by close of business on October 1, 2014. OAH does allow parties to delay filing their prehearing conference statements to noon the business day prior to the prehearing conference, if the parties are working on a potential settlement. Such is not the case here and the parties' prehearing conference statements are late. OAH is concerned with Mr. Mishook's cavalier attitude towards OAH's practices and procedures.

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 hearing dates and timelines shall proceed as calendared. The parties have been given two opportunities to mediate and they have canceled both mediations. One of the mediation dates was a date chosen by the parties. The Individuals with Disabilities Education Act requires that parties be given an opportunity to participate in mediation, it does not require they be given endless opportunities. If the parties can provide a reasonable explanation of why they were unable to attend the two prior mediations, they may file another continuance request, with specific proposed dates. The request is denied.

IT IS SO ORDERED.

DATE: October 2, 2014

/s/

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