

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

IRVINE UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015030749

ORDER DENYING REQUEST FOR
STAY OF PROCEEDINGS AND/OR TO
CONTINUE

On March 16, 2015, Irvine Unified School District filed a due process complaint naming Student as Respondent. The sole issue in the case is whether Irvine's individualized education program offer dated June 4, 2014, and amended on December 18, 2014, constitutes an offer of a free appropriate public education to Student.

On October 18, 2013, the Office of Administrative Hearings issued a decision in an earlier case between the same parties, OAH Case No. 2013080703, that held Irvine offered Student a FAPE in a June 2013 IEP for the 2013-2014 school year. Student appealed that decision and the appeal is currently pending before the Court of Appeals for the 9th Circuit. On March 19, 2015, Student filed a request to stay the due process proceedings in this case, pending the outcome of the appeal.

APPLICABLE LAW AND DISCUSSION

Student asserts that the current matter pending before OAH should be stayed indefinitely and cites as authority *Federal Rules of Appellate Practice*, Rule 8, asserting that a party seeking to preserve the status quo pending consideration of an appeal may seek a stay preventing enforcement of another judgment. This rule does not apply to OAH in adjudicating claims arising under the Individuals with Disabilities Education Act. Even if it did, Student's reliance on this rule is misplaced. There is no judgment at this time to be enforced. Student's contention in the motion that both cases involve the same parties and the same issues is incorrect. The current matter pending before OAH involves Irvine's offer of FAPE to Student in the June 4, 2014, as modified by the December 18, 2014, IEP. Whether or not that IEP constitutes an offer of FAPE to Student has not been litigated nor is it on appeal.

Irvine correctly cites in its opposition that it has an obligation to make an IEP offer to Student annually and it is entitled to litigate the appropriateness of that offer. (*See* 20 U.S.C. § 1414(d)(4)(A)(i)). Student, however, remains in his current placement under the stay-put provision of the IDEA pending resolution of the appeal of the earlier case.

Irvine asserts that Student's request is tantamount to a request to continue this matter indefinitely. In viewing this request in the light most favorable to Student, it can be considered a motion to continue OAH Case No. 2015030749.

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. Good cause has not been established to continue this matter

IT IS SO ORDERED.

DATE: March 24, 2015

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings