BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>LONG BEACH UNIFIED SCHOOL DISTRICT. | OAH Case No. 2018100281<br><br>ORDER DENYING REQUEST FOR CONTINUANCE |

On October 5, 2018, Student filed a request for due process hearing (complaint) with the Office of Administrative Hearings, naming Long Beach Unified School District. The complaint alleges that Long Beach denied Student a free appropriate public education by: (1) failing in the spring of 2018 to provide Student test-taking accommodations specified in her individualized education program; and (2) failing in the spring of 2018, and in the 2018-2019 school year to the filing of the complaint, to provide Student tutoring services offered in Student's IEP. OAH set hearing of the matter for November 29, 2018.

On November 2, 2018, Long Beach filed a motion that OAH continue the hearing of this matter 68 days to February 5-7, 2019, schedule mediation for December 14, 2018, and set a prehearing conference on January 28, 2019. Long Beach made its motion on grounds that: (1) Long Beach and its counsel, Cynthia Yount, have a conflict with the November 29, 2018 hearing date because OAH Case no. 2018050736, in which Ms. Yount represents Long Beach, is set for hearing on November 27-29, 2018; and (2) Long Beach does not have three consecutive business days available for hearing until February 2019. Ms. Yount's supporting declaration states that she attempted to get Student's agreement to the mediation, PHC, and hearing dates proposed by Long Beach in its motion, but Student did not agree with those dates, or with an alternative January 7, 2019 mediation date also proposed by Long Beach.

On November 7, 2018, Student filed an opposition to Long Beach's motion. Student agreed that Long Beach's motion demonstrated good cause for a brief continuance of the hearing date, but objected that Long Beach's motion failed to show good cause for the requested 68-day continuance, because: (1) the motion provided no details of the nature of Long Beach's other scheduled events, or explanation as to why those events could not be rescheduled, or why the events should take priority over Student's right to a speedy resolution of her claims; and (2) Ms. Yount's declaration in support of the motion to continue did not explain or even mention Long Beach's conflicts that allegedly preclude a continuance from November 2019, 2018 to any hearing date sooner than February 5, 2019. Student neither opposed nor agreed to mediation, but did not suggest any mediation, PHC or hearing dates as alternatives to the dates Long Beach proposed .

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).)

Student's opposition indicates that Student would not oppose a brief continuance of the hearing of this matter, but she does not consent to the 68-day delay sought by Long Beach, or to mediation, which is favored under the Education Code, but voluntary. (Ed. Code, § 56500.3, subds. (a) and (c).) Under these circumstances, Long Beach's motion to continue and supporting declaration do not show good cause for the requested 68-day continuance, because they do not set adequately forth conflicts which demonstrate that Long Beach, and/or Ms. Yount, cannot participate in a hearing on all dates between November 29, 2018 and February 5, 2019. Long Beach demonstrates a potential conflict with Case no. 2018050736, if the hearing in that matter proceeds as scheduled on November 27, 2018. That hearing in progress would have priority over this matter on November 29, 2018, and constitute good cause to continue this matter.

Long Beach's motion to set mediation and continue the PHC and hearing dates in this matter is therefore denied. This denial is without prejudice to a renewed motion by Long Beach that demonstrates good cause for a continuance of the hearing to February 5, 2019 or some earlier date, or a joint request by the parties to continue the matter to a date within 60 days of a mediation date selected by the parties.

IT IS SO ORDERED.

DATE: November 09, 2018

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ROBERT G. MARTIN
Administrative Law Judge
Office of Administrative Hearings

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