

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. 2012100032

ORDER DENYING SECOND JOINT
REQUEST FOR CONTINUANCE

Student filed the due process complaint on September 28, 2012. The Office of Administrative Hearings (OAH) issued an initial scheduling order; the parties subsequently cancelled the mediation. On November 9, 2012, OAH granted the parties' joint request to continue, setting mediation for January 17, 2013, the prehearing conference (PHC) for February 11, 2012, and the due process hearing for February 19 through 21, 2013. The parties cancelled the January 17, 2013 mediation.

On January 24, 2013,¹ Student's counsel filed the parties' Second Request to Continue, seeking to hold the mediation on February 28, 2013, the PHC on May 6, 2013, and the hearing on May 13, 14, and 15, 2013. The motion is signed by representatives for each party.

Applicable Law

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

¹ Student's counsel faxed the Second Request to Continue to OAH on January 23, 2013, but after hours at approximately 5:30 p.m.

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).)

Analysis and Discussion

The motion states that the parties had entered into an interim agreement on November 8, 2012, which provided for various assessments to be conducted by District staff. Since the parties were productively discussing resolution, they cancelled the initial mediation. Following the interim agreement, the parties agreed upon continued mediation and hearing dates which they believed, at that time, would enable completion and review of the assessments. The parties jointly requested OAH to continue; OAH granted the request, as indicated in the November 9, 2012 order.

The present motion states that on January 11, 2013, the parties became aware that the assessments would not be completed and reviewed until February 20, 2013. Accordingly, the parties did not participate in the scheduled January 17, 2013 mediation. Instead, they discussed and agreed dates for continued mediation, PHC, and hearing.

Almost four months have passed since the initial filing. The initial continuance was to allow completion of assessments, per the interim agreement, so that the parties may more knowledgeably discuss resolution. However, the assessments' completion is delayed until February 20, 2013. Therefore, good cause would exist for a short continuance to allow the parties to mediate after consideration of the assessments. The request to continue the mediation to February 28, 2013, would be reasonable.

However, the parties also request that the hearing be continued to May 13, 14, and 15, 2013. The moving papers cite no basis for seeking to continue the hearing to 11 weeks after the requested mediation and more than seven and a half months after the complaint's filing. Accordingly, the parties have failed to demonstrate good cause for such a lengthy delay in bringing this matter to hearing.

The parties' second joint request to continue is denied. All prehearing conference and hearing dates are confirmed and shall proceed as calendared

IT IS SO ORDERED.

Dated: January 24, 2013

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings