

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SEQUOIA UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2012090164

ORDER DENYING MOTION FOR
CONTINUANCE OF HEARING AND
CONTINUING PREHEARING
CONFERENCE TO WEDNESDAY,
FEBRUARY 13, 2013

Student's request for a due process hearing was filed on September 6, 2012, and has been continued multiple times. It is now set for the hearing to begin on February 19, 2013, with a telephonic prehearing conference on Monday, February 11, 2013. On January 3, 2013, in a continuance order, the Office of Administrative Hearings (OAH) informed the parties that any further continuance would require a substantial showing of good cause. On the morning of February 8, 2013, the parties filed a joint request to continue the hearing to April 1, 2013, on the ground that they require further time to complete a settlement agreement. OAH denied the motion based on the parties' failure to provide any information to show substantial good cause to continue the case for a month and a half.

In the afternoon of February 8, 2013, the parties filed another joint request for a continuance of the hearing to February 26, 2013.¹ The parties state they need the additional time to "clarify the identity of service providers called for in the agreement." In addition, they offer that District's special education director was unavailable for "the last few days due to illness," but is now available to discuss "final details."

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, section 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

¹ At this stage of the case, the parties should provide OAH with their estimates as to how many days of hearing are requested, if the case will take more than one day.

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 are confirmed and shall proceed as calendared. While at first glance continuing the hearing for one week may appear reasonable. However, a closer analysis finds the same defects as stated in the earlier order. Given today's date, the parties still have about 10 more calendar days within which to negotiate settlement. It generally only takes a day or two to consider the identity of service providers. Accordingly, the parties failed to establish good cause to continue the due process hearing and the request is denied. It is apparent from the record that the parties' prehearing conference statements were due to OAH by February 6, 2013, and have not been filed for the prehearing conference on February 11, 2013. It is the parties' responsibility to prepare for hearing while engaged in settlement negotiations. The parties shall file their respective prehearing conference statements by close of business on Monday, February 11, 2013, and the prehearing conference is continued to Wednesday, February 13, 2012, at 1:30 p.m.

IT IS SO ORDERED.

Dated: February 8, 2013

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings