

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WILLIAM S. HART UNION HIGH
SCHOOL DISTRICT.

OAH CASE NO. 2013051148

ORDER GRANTING REQUEST FOR
CONTINUANCE OF HEARING AND
SETTING MEDIATION

On September 11, 2013, Student made an oral motion at the beginning of the second day of hearing for (i) a continuance and (ii) an order that William S. Hart Union High School District (District) fund a psychoeducational independent educational evaluation (IEE). District opposed the motion. Student's motion was discussed on the record, and the matter was deferred for further argument and consideration at a trial status conference on September 13, 2013 (TSC). Student filed written motion for a continuance and IEE immediately prior to the TSC, which was withdrawn during the TSC. The TSC was recorded.

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 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).)

DISCUSSION

The parties do not dispute that District received the report of a triennial psychoeducational assessment conducted on Student from March 17-24, 2011 (the report) a few days prior to hearing, and presented a copy of the report to Student's counsel on the first day of hearing. Student had previously made an educational records request to District in preparation for hearing, and the report was not contained in the records produced by District.

Student contends that the production of the report comes as a surprise, and requests a continuance for an expert psychologist to review the report, conduct a psychoeducational assessment of Student, and advise Student's counsel on whether this information impacts the prosecution of Student's due process hearing request (complaint). Student also requests that District fund this assessment as a psychoeducational IEE. District contends that the report was summarized and discussed at the individualized education program (IEP) team meeting on April 12, 2011, and its contents cannot constitute a surprise to Student. District notes that the April 12, 2011 IEP states that the report is attached, which should also have alerted Student and his counsel to the existence of the report. District also contends that the psychoeducational assessment was conducted by another school district prior to Student entering District, and that District is not responsible for funding an IEE based upon the alleged insufficiency of that assessment. District also argues that an IEE is a remedy, and objects to the award of an IEE prior to a determination on the merits of Student's complaint.

Request for Independent Educational Evaluation

Student's complaint neither challenges the psychoeducational assessment embodied in the report, nor seeks an IEE as a proposed resolution, and Student's request for an order that District fund an IEE due to insufficiencies in the assessment is denied as outside the scope of this proceeding. This denial is without prejudice to consideration of an award of an IEE as all or part of a remedy in the event Student prevails on any of the claims presented.

Request for Continuance

After hearing the arguments of the parties, the request for continuance is granted for good cause. The recently disclosed report presented a significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. The April 12, 2011 IEP states that there is a psychoeducational assessment report attached, but the IEP document produced by District in response to Student's records request did not have an attached report, and no such report was in the educational records. Therefore, it was reasonable of Student to believe that the only "report" was the four-page summary included in the April 12, 2011 IEP notes, and to be surprised upon receipt of a 16-page psychoeducational assessment report on the first day of hearing. The information contained in the report is relevant to, and probative of, Student's unique educational needs at the beginning of the 2011-2012 academic school year at issue. Accordingly, Student's request for a continuance to review the report with an expert is granted.

Student has identified a psychologist who will perform a records review, to include the report, and discuss his resulting opinions with counsel by October 1, 2013. A records review should be sufficient to eliminate the surprise presented by the newly disclosed report. District represents that is not adverse to a continuance of approximately two weeks. Both parties have also represented that they are willing to attend a mediation of this dispute. Therefore, all dates are vacated, and the matter will be set as follows:

Mediation:	September 26, 2013 at 9:30 AM
Due Process Hearing:	October 2, 3 and 7-10, 2013 at 9:30 AM, except October 7, 2013, which will begin at 1:30 PM, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

Each party may add one psychologist to their current witness list to testify regarding the contents of the report. The additional witness shall be disclosed to the other party in writing no later than September 27, 2013.

IT IS SO ORDERED.

Dated: September 12, 2013

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings