

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2013050611

ORDER DENYING SECOND
REQUEST FOR CONTINUANCE

On September 25, 2013, the parties filed a second request for a continuance of the hearing until February 20, 2014, a hearing date nine months after this matter was filed. The reason given was District's failure to hold an IEP team meeting over the summer, an IEP team meeting from September 20, 2013 needing to be completed, and a desire to mediate.

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. The parties have not shown good cause for a second continuance, particularly of such an extraordinary length. District not holding an IEP team meeting over the summer is not good cause, as the IDEA expressly requires an IEP to be in place prior to each school year. Similarly, the IDEA does not contemplate that an IEP team meeting held on September 20, 2013 would require months to finalize and consider. Further, this matter concerns allegations of a denial of a FAPE for the two years prior to May of 2013 when the matter was filed, such that any IEP being developed prospectively is not directly relevant to compensatory remedies for violations allegedly going back as far as 2011. Finally, the parties have not provided any reason why mediation could not be held on the first day scheduled for hearing.

IT IS SO ORDERED.

Dated: September 25, 2013

/s/

RICHARD T. BREEN
Presiding Administrative Law Judge
Office of Administrative Hearings