

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2014030919

LONG BEACH UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2014040984

ORDER DENYING REQUEST FOR
CONTINUANCE

On March 21, 2014, Student filed a Request for Due Process Hearing in OAH case number 2014030919 naming Long Beach Unified School District (District). On April 18, 2014, District filed a Request for Due Process Hearing in OAH case number 2014040984 naming Student. On April 18, 2014, District filed a Motion to Consolidate the two cases and to continue the due process hearing in both matters so the parties could participate in mediation. Student did not oppose the motion or the request for continuance. The motion was granted and OAH continued the consolidated cases on April 24, 2014 to allow the parties the opportunity to participate in mediation. The parties participated in mediation of the consolidated cases on May 4, 2014 without reaching a resolution. The consolidated matters are set for a pre-hearing conference on July 21, 2014, and for hearing on July 28, 29, 30 and 31, 2014, which are dates the District selected and Student did not oppose.

On June 25, 2014, the parties filed a joint stipulation requesting a further continuance of the hearing to October 27-30, 2014. The only reason stated in the stipulation was that an independent assessment is in the process of being completed, and is necessary to determine whether Student's disability requires the District provide him with home to school transportation, which is the only issue in the consolidated matters. Neither party offered a declaration stating facts that would establish good cause for delaying the hearing by another 90 days. For example, no facts were offered explaining what kind of assessment was being performed, when it started, when the expected completion date was, why the parties need another four months from this date to consider the results, and why this matter cannot go to hearing sooner than the end of October.

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 failed to establish good cause for a continuance of an additional ninety days by offering declarations under penalty of perjury that establish credible facts supporting good cause.

IT IS SO ORDERED.

DATE: June 25, 2014

/s/
ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings