

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT(S) ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT, FREDERICK DOUGLASS
ACADEMY CHARTER MIDDLE
SCHOOL, FREDERICK DOUGLASS
ACADEMY HIGH SCHOOL AND INNER
CITY EDUCATION FOUNDATION
PUBLIC SCHOOLS.

OAH CASE NO. 2014060045

ORDER DENYING REQUEST FOR
SECOND CONTINUANCE

On August 27, 2014, the parties filed a second joint request to continue the dates in this matter in order to obtain the results of an agreed-upon independent educational evaluation, expected in October 2014, which they hope will provide information to determine whether, and on what terms, the matter could be resolved and withdrawn.

This matter was filed on May 29, 2014. OAH sent a scheduling order which provided for a voluntary mediation date on June 30, 2014, and a due process hearing commencing on July 23, 2014. The parties elected not to participate in mediation on the scheduled date. On July 8, 2014, OAH granted the parties' initial joint request to continue the dates in this matter, and scheduled the prehearing conference on September 19, 2014, and due process hearing on September 29, through September 30, 2014, the same dates requested by the parties. Based upon the parties' request, OAH also set the mediation for September 3, 2014, 1:30 p.m.

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. The parties request a second continuance to dates that are in excess of 120 days from the initial hearing date, July 23, 2014. The parties' have had notice of the issues in this matter and the information needed to resolve or hear this matter, since, at a minimum, the date of filing, May 29, 2014. Between the date of filing and July 8, 2014, when they reached agreement on continued dates, they also had time to consider what information they needed to resolve their dispute or participate in a due process hearing within the time frame afforded by the IDEA. The parties' desire to obtain more information through an agreed-upon independent educational evaluation, from an assessor who cannot complete the assessment within the agreed upon timetable for hearing, but instead on an unspecified date in October 2014, may advance settlement as the parties' maintain, but is not good cause for continuance of the due process hearing, especially where the requested continuance is 120 days or more from the initial hearing date. All prehearing conference and hearing dates are confirmed and shall proceed as calendared.

IT IS SO ORDERED.

DATE: August 27, 2014

/s/

EILEEN COHN
Administrative Law Judge
Office of Administrative Hearings