BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Consolidated Matters of:<br><br>PARENTS ON BEHALF OF STUDENT,<br><br>v.<br><br>SACRAMENTO CITY UNIFIED SCHOOL DISTRICT, | OAH Case No. 2013100405 |
| SACRAMENTO CITY UNIFIED SCHOOL DISTRICT,<br><br>v.<br><br>PARENTS ON BEHALF OF STUDENT. | OAH Case No. 2013101109<br><br>ORDER DENYING REQUEST FOR CONTINUANCE |

This matter is scheduled for a due process hearing before the Office of Administrative Hearings (OAH) beginning on February 25, 2014.[1] On February 13, 2014, Student filed a request to continue the hearing dates in this matter based on uncompleted independent assessments and observations. On February 14, 2014, the undersigned Administrative Law Judge (ALJ) conducted a telephonic prehearing conference, during which the ALJ granted Sacramento City Unified School District's (District's) request to file written opposition and Student's request to reply. On the same date, District filed a written opposition, and on February 18, 2014, Student filed a reply.

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.) For a student-filed case, this time is extended for a mandatory 30-day resolution period. 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

[1] As set forth in the prehearing conference order, the hearing shall begin at 9:30 a.m. on Tuesday, February 25, 2014. Thereafter, the hearing shall continue at 9:00 a.m. on February 26 and 27; at 1:30 p.m. on Tuesday, March 4, at 9:00 a.m. on March 5 and 6; at 9:30 a.m. on March 11, and at 9:00 a.m. on March 12 and 13, 2014, unless otherwise ordered.

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).)

Student's request for a due process hearing (complaint) was filed with OAH on October 10, 2013. On October 30, 2013, District filed its complaint and on November 6, 2013, OAH granted District's motion to consolidate the cases. On November 19, 2013, OAH granted the parties' joint request for a continuance. On December 13, 2013, OAH granted Student's request to vacate then-scheduled hearing dates due to a settlement pending school board approval. On January 10, 2014, Student requested new hearing dates based on the school board's failure to approve the settlement, and on January 13, 2014, OAH rescheduled the matter.

In the new scheduling order, OAH ordered both parties to file any prehearing motions at least three business days prior to the February 14, 2014 telephonic conference. Student's motion for a continuance was not filed with OAH until close to the end of the business day on February 13, 2014, with no explanation for the delay. The motion is based on two grounds. First, Student retained an expert, Dr. Sanderson, whose psychological assessment of Student will allegedly not be ready by the start of the hearing. Second, Student's expert, Dr. Solomon, will allegedly not be able to observe District's proffered programs until the day before the start of the hearing. Student argues that she has the right to have these experts prepare prior to the hearing. District contends that Student has had ample opportunity to prepare and has not established good cause for a continuance.

The ALJ has considered the arguments of both parties, the pleadings filed to date, and the facts and circumstances of this case. Student has not established good cause to continue the hearing. First, Student's request was not timely filed. Second, the motion is not supported by evidence. The motion filed with OAH consists of 99 pages, including another school district's April 2013 psychoeducational assessment of Student, individualized education program (IEP) team meeting notes, District's September 2013 multidisciplinary psychoeducational assessment of Student, District's September 27, 2013 IEP, a declaration under penalty of perjury from Mother, and assorted emails. These documents do not support Student's request. In particular, as hearsay, Mother was informed by Dr. Sanderson on February 3, 2014, that it would take him "two to three weeks" to complete his assessment. The assertion by Student's attorney that his assessment, or written report, would not be completed by February 25, 2014, is therefore not supported by competent evidence. In addition, Student's assertion that reliance on a pending settlement entitled the family to vacillate and not prepare for hearing is misplaced. OAH requires documentary evidence of a

final, binding settlement precisely because a case is never settled until the last signature, event, or approval is in place. It is incumbent on the parties to continue to prepare for hearing while negotiating a settlement.

Third, Student's claim that she has a statutory right to have assessments and observations prior to hearing does not accurately reflect the applicable law and does not address the timing of those opportunities. For example, while Education Code section 56329, subdivision (b) grants parents the right to obtain an independent educational evaluation at any time, that right cannot be used to circumvent the mandatory statutory timelines for hearings unless good cause for a continuance is established. By the same token, the right of Student's independent assessor to conduct in-class observations is likewise limited. Here, Student has had over four months to prepare for hearing and has not presented sufficient competent evidence to establish good cause in the circumstances. Accordingly, Student's motion is denied.

IT IS SO ORDERED.

DATE: February 20, 2014

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings