

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN RAMON VALLEY UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2010100676

ORDER GRANTING REQUEST FOR
CONTINUANCE AND TRIAL
SETTING CONFERENCE

On October 15, 2010, attorneys Mandy Leigh and Sarah Fairchild filed with the Office of Administrative Hearings (OAH) a request for due process hearing (complaint) on behalf of Student against the San Ramon Valley Unified School District. The matter was continued repeatedly at the joint requests of the parties in order to facilitate mediation and settlement negotiations. The matter was eventually set for due process hearing on Monday, March 28, 2011.

Late on Friday, March 25, 2011, attorneys Leigh and Fairchild notified Parent and OAH that they were withdrawing from their representation of Student. Parent then requested a two-week continuance to obtain other representation. Over the District's objection, that request was granted, and the matter was scheduled for hearing on April 12, 2011.

On or about April 4, 2011, Parent filed a request to vacate the hearing dates and have a trial setting conference on April 18 or 19, 2011, on the ground that she has conditionally obtained new counsel but that the attorney cannot prepare for and present Student's case by April 12, 2011. Parent also requests that OAH set a mediation on April 21, 2011. On April 4, 2011, the District filed an opposition to Parent's requests.

APPLICABLE LAW AND DISCUSSION

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. (34 C.F.R. § 300.515(a)(2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).)

Student's rights

A student or parent has the right under the Individuals with Disabilities Education Act (IDEA) to be represented by an attorney (20 U.S.C. § 1415(h)(1)), and the District claims it

“in no way opposes [Student’s] efforts to retain representation.” However, the result it seeks would likely deprive Student of that right.

In support of her request for a continuance, Parent asserts that she wishes Student to be represented by attorney Roberta Savage. Her request is supported by a letter from Ms. Savage, who states in substance that she wishes to represent Student; that she is unable to prepare for and participate in a hearing on the dates now scheduled; and that if a continuance is obtained she “will be able to represent [Student].” She also states that she will be available for a trial setting conference on April 18, 2011, and for a mediation on April 21, 2011.

The District asserts two grounds for opposing a continuance. First, the District argues that Student has not attended school this entire academic year (although he is receiving some tutoring), so further delay in hearing his case will injure him in his education. However, the decision whether to seek a continuance for the purpose of obtaining an attorney belongs to Parent, who holds the child’s educational rights. It is Parent’s right, not the District’s to decide that an additional continuance is justified in order to obtain representation.

The time limits imposed by the IDEA exist primarily for the protection of students and parents. (See *Lake Washington School Dist. No. 414 v. Office of Superintendent of Public Instruction* (9th Cir., Feb. 22, 2011, No. 09-35472) 2011 WL 590297.) In *Lake Washington* the Ninth Circuit held that a district had no standing to enforce the IDEA’s statutory time limits by bringing an action against state agencies, observing that “[h]ere, the School District seeks to enforce for its own ends the procedural protections intended to safeguard the rights of disabled children and their parents.” (*Id.*, slip opn. at p. 4)

Moreover, it does not appear that denying a continuance would bring Student back to school any sooner than if a continuance is granted. The end of the school year is approaching. There are seven relatively complex issues in the case, and the District estimates that the hearing will consume six days. Even on the current schedule, it is highly unlikely that a decision could be filed in time to affect Student’s attendance in this school year.

Finally, the District’s new concern for speedy resolution contradicts its previous actions in this matter. The complaint was filed on October 15, 2010, and at that time Student was already out of school. On October 20, 2010, the District joined in a request to continue a mediation date. On February 17, 2011, the District joined in a request to continue the due process hearing for approximately a week to facilitate settlement. On February 25, 2011, Student filed a “Notice of Settlement in Principle.” At that point the due process hearing was set for March 1, 2011, but on March 25 the District joined in Student’s request to continue the matter for another 60 days, and if necessary at the end of those 60 days to have a trial setting conference rather than a due process hearing. Then settlement negotiations apparently failed. Thus the District’s new-found sense of urgency coincides not with any new factual development, but with the failure of its settlement negotiations, the withdrawal of previous counsel, and the prospect that if forced to immediate hearing Parent would have to represent Student *in pro per*. Even the continuance granted here will result in a hearing well within the schedule the District itself proposed on March 25, 2011.

Cost of Preparation

The District also argues that it has incurred substantial costs in preparing for hearing more than once, only to have the matter continued shortly before the hearing. That is a significant consideration. However, if a continuance is not granted, the District would still be required to prepare again for the hearing that would begin on April 12, 2011. And in the long run the District may benefit from the presence of an attorney for Student. It is likely that the presentation of Student's case by counsel, rather than by Parent acting *in pro per*, will be substantially better, clearer, and more economical.

In addition, much of the District's previous preparation was occasioned by its own requests for continuance described above, and by its confidence that settlement negotiations would succeed. And since the District has already fully prepared its case twice, it ought to be able to incorporate those previous preparations in preparing for a later hearing. It does not have to start from scratch.

It is noteworthy that Parent has acted promptly and with diligence in obtaining new counsel. Ms. Savage's letter is dated only two days after Parent's previous request for continuance.

In balancing all the above factors, and on the unusual facts of this case, the better exercise of discretion is to grant Parent's request.

ORDER

1. Parent's request for a continuance of the due process hearing is granted.
2. All dates now on calendar are vacated.
3. A telephonic trial setting conference will be held on April 18, 2011, at 3 p.m. OAH will initiate the call.
4. A mediation will be calendared for April 21, 2011, at 9:30 a.m.

IT IS SO ORDERED.

Dated: April 6, 2011

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings