

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013060141

ORDER DENYING REQUEST FOR
CONTINUANCE

On May 31, 2013, Student filed a Due Process Hearing Request (complaint) naming Torrance Unified School District (District). On June 5, 2013 OAH issued a Scheduling Order setting mediation on July 3, 2013, a prehearing conference (PHC) on July 19, 2013, and a due process hearing (DPH) on July 25, 2013.

On June 27, 2013 the parties filed a joint request to continue the mediation to August 27, 2013. On July 8, 2013, Torrance filed a first request to continue the PHC and the DPH in order to complete the requested and agreed upon mediation and because counsel was scheduled to be out of town on the scheduled dates; the motion was supported by the sworn declaration of District's counsel, Sharon S. Watt. Torrance proposed new dates of September 6, 2013, for the PHC and September 17, 19, and 23-26, 2013, for the DPH. On July 11, 2013, Student filed a response and agreed to the dates requested. OAH granted District's motion for continuance and issued an order setting the PHC and hearing for the requested dates.

On August 23, 2013, District filed a second request to continue the hearing in this matter to January 2014. The motion is supported by the sworn declarations of Ms. Watt and Cheherazad E. Raetz, a legal administrator at Ms. Watt's firm, Filarsky & Watt LLP. Ms. Watt states that she is scheduled for another OAH hearing on October 1 through 3, 2013. Given that she will be concluding a scheduled 6-day hearing in this matter on September 26, 2013, Ms. Watt contends that she would have insufficient time to adequately prepare for her October hearing. Additionally, Ms. Watt states that she is the only attorney authorized by District to attend mediations and hearings on District's behalf.

Ms. Watt states that District requested the presently scheduled September 2013 hearing dates in the July 2013 motion for continuance because of the inadvertence or mistake of the legal administrator Ms. Raetz. Ms. Raetz states that she is a relatively new employee and she was unaware, when providing the September 2013 dates for a continuance of this matter, that she was not providing sufficient time for Ms. Watt to prepare for her next OAH hearing, which is scheduled to commence on October 1, 2013.

On August 28, 2013, Student filed an opposition to the District's request for a second continuance to January 2014, generally stating that District has failed to demonstrate good cause for again continuing the hearing.

Applicable Law

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).)

Discussion

District has failed to demonstrate good cause for the requested continuance. This matter was filed in May 2013 and was already continued once into September 2013, due to the unavailability District's counsel. Further, when OAH granted District's motion in early July 2013, OAH continued the PHC and hearing to the District's requested dates.

District's motion for a second continuance is predicated upon an assertion of clerical error due to the legal administrator's inexperience in scheduling and hearing preparation. The District's motion asserts the mistake was that of a non-attorney employee, not the attorney. However, the attorney is ultimately responsible for her calendar and, before signing a declaration under penalty of perjury, is charged with assuring the accuracy of the facts stated therein.

Further, the September 2013 hearing dates and the October 2013 hearing dates in District's other OAH matter do not conflict. District's motion asserts that Ms. Watt will not be able to properly prepare for the October 2013 hearing because it commences only a few days following the conclusion of the hearing in this matter. In support, District contends that Ms. Watt is the only attorney it authorizes to appear on its behalf at mediations and hearings. The attorney-client relationship, however, cannot be used as the operative basis of a finding of good cause. Convenience of counsel also does not demonstrate good cause, especially when seeking a four-month continuance into January 2014.

Having reviewed the request for continuance and having considered all relevant facts and circumstances, the District's motion to continue the PHC and hearing dates is denied. All dates are to proceed as calendared.

IT IS SO ORDERED.

Dated: August 29, 2013

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings