

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL
DISTRICT AND LOS ANGELES
COUNTY OFFICE OF EDUCATION.

OAH CASE NO. 2010040028

ORDER GRANTING REQUEST FOR
CONTINUANCE AND SETTING
MEDIATION AND TRIAL SETTING
CONFERENCE

On April 22, 2010, Student's attorney sent a letter to the Office of Administrative Hearings (OAH) requesting mediation on May 5, 2010, the date originally set for mediation by OAH. On April 23, 2010, Student's attorney telephoned OAH and spoke with multiple personnel requesting that the mediation date be set on May 5. On April 23, 2010, the District sent a letter to OAH indicating that it had received three scheduling orders in this matter and that the parties would meet for mediation on May 5, 2010, whether OAH sent a mediator or not. The parties did not address in either communication that the mediation date requested by the parties was after the scheduled hearing date in this matter.

On April 27, 2010, the parties submitted a joint request to continue the matter.¹

PROCEDURAL HISTORY

On March 30, 2010, Student filed a request for due process hearing naming the District. On April 1, 2010, OAH sent a scheduling order setting mediation on May 5, 2010, a prehearing conference on May 19, 2010, and a due process hearing on May 24-27, 2010.

On April 5, 2010, the District sent OAH a copy of the Notice of Resolution Session Outcome which included a copy of an email exchange between the District and Student agreeing to waive the resolution session and go directly to mediation. The exchange of emails between Student's attorney and the District occurred on April 2, 2010.

On April 19, 2010, OAH sent a copy of a new scheduling order reflecting that the dates for hearing had to be advanced based upon waiver of the resolution session. The new

¹ Los Angeles County Office of Education (LACOE) also agreed to the continuance. A motion to dismiss is pending involving LACOE and will be ruled upon separately.

scheduling order listed mediation for April 21, 2010, a prehearing conference for May 19, 2010, and a due process hearing for May 24 to 27, 2010. OAH issued an amended scheduling order that same day resetting the dates to mediation on April 21, a prehearing conference on April 28, 2010, and a due process hearing on May 4 to 6 and 10, 2010.

APPLICABLE LAW

When a student files a request for due process hearing, the District is required to hold a resolution session within 15 days of receiving the due process hearing request, unless the parties agree to waive the resolution session in writing. (20 USC § 1415(f); 34 C.F.R. § 300.510(c)(1)(2006).) The timeline for hearing begins the day after OAH is provided a copy of the written waiver of the resolution session. (34 C.F.R. § 300.510(c)(1) (2006); Ed. Code, § 56505, subd. (d)(1).) In order to maintain the statutory time frames, OAH must adjust the mediation and hearing dates in this matter based upon receiving the written waiver of the resolution session. (34 C.F.R. § 300.510(c)(1)(2006); Ed. Code, § 56501.5, subd. (d)(1).)

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).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, 3.1332 .) Generally, continuances of matters are disfavored. (Cal. Rules of Court, 3.1332(c).)

DISCUSSION

In this matter, OAH was required to advance the hearing dates based upon the written waiver of resolution session in order to hear the matter within the statutorily mandated time frames. The original scheduling order issued by OAH set dates for mediation and hearing based upon the timelines of a student-filed matter that accounted for the 30-day resolution session period. Because the parties waived the resolution session, if the matter were to proceed without any change in the dates, then the statutory timelines would have expired by the time OAH held the hearing in this matter. Therefore, on April 19, 2010, OAH issued a new scheduling order advancing the hearing dates.

Unfortunately, due to clerical error, the new scheduling order was sent on April 19, providing only two days notice to the parties to conduct mediation. The error was further compounded by the clerk sending incorrect hearing dates. Therefore, OAH sent an amended scheduling order also on April 19, 2010, setting the current hearing dates of May 4 to 6 and 10, 2010. A prehearing conference is scheduled for April 28, 2010, at 1:30 p.m. The parties

have expressed a desire to mediate this matter but were not available on the date set for mediation. OAH acknowledges its error.

After the parties sent two letters demanding a date for mediation that is after the scheduled hearing dates, the parties jointly submitted an agreement to continue the dates for hearing. In light of the two letters sent by Student on April 22 and the District on April 23, as well as the joint agreement to continue the matter in its entirety, the request to continue is granted as of April 23, 2010, the date the District sent its letter requesting mediation on May 5. Accordingly, all dates in this matter are vacated. This matter is set as follows:

Mediation:	June 16, 2010, at 9:30 a.m.
Prehearing Conference:	July 6, 2010, at 10:00 a.m.
Due Process Hearing:	July 19 to 21, 2010

IT IS SO ORDERED.

Dated: April 26, 2010

/s/

RICHARD CLARK
Presiding Administrative Law Judge
Office of Administrative Hearings