

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

VISALIA UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012120888

ORDER CONTINUING THE
PREHEARING CONFERENCE AND
ORDER TO SHOW CAUSE WHY THE
DISTRICT'S COMPLAINT SHOULD
NOT BE DISMISSED

On December 28, 2012, attorney Daniel A. Osher, on behalf of the Visalia Unified School District (District) filed a request for a due process hearing (complaint) with the Office of Administrative Hearings (OAH) against Student.

On January 3, 2013, Mr. Osher, on behalf the District, filed a request to continue the dates in this matter based upon scheduling conflicts Mr. Osher had with the mediation and hearing dates in OAH's January 2, 2013 scheduling order, and the additional grounds that he had not been able to contact Student's parent to arrange mutually agreeable dates. On January 8, 2013, Mr. Osher withdrew the District's continuance request as he reached Parent and they were discussing mutually agreeable dates and he would be shortly submitting a joint request for a continuance.

OAH requires a party to file a PHC statement at least three business days prior to the Prehearing Conference (PHC). On January 11, 2013, Mr. Osher filed the District's PHC statement, which did not include information required by OAH. Instead, the District's PHC statement stated that Mr. Osher and Parent had not been able to agree on mutually agreeable dates because Parent was on vacation, but expected that Mr. Osher and Parent would agree upon dates before the PHC, scheduled for January 16, 2013. Student did not submit a PHC statement. To date, OAH has not received a subsequent continuance request from the parties.

On January 16, 2013, OAH calendar clerk Cheo Brown attempted to contact Parent to inform her that the PHC conference scheduled for that day was to commence as scheduled at 10:00 a.m., but received no answer to his telephone call. When Mr. Brown spoke with Mr. Osher, Mr. Osher informed Mr. Brown that Parent was deaf and OAH would need to arrange for communication assistance for the PHC for Parent. At 11:10 a.m., the District submitted a continuance request based on Mr. Osher's conversation with Parent the day before the scheduled PHC.

APPLICABLE LAW

Under the Individuals with Disabilities Education Act (IDEA), 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.) Given the short time frames applicable to this case, it is critical that the parties follow orders issued by OAH and participate in advancing the matter to hearing.

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).)

ORDER TO SHOW CAUSE and CONTINUANCE OF PHC

When a party files a complaint pursuant to the IDEA, that party has a duty to prosecute the case which includes disclosing his/her witnesses and documentary exhibits and otherwise prepare for hearing, including making timely requests for case continuances. Additionally, when a school district files a complaint, the school district should inform OAH if the parent requires special assistance. In this matter, the District's attempt to work with Parent to obtain mutually dates for a continuance request does not excuse the District from filing a complete PHC statement and not being prepared to prosecute the District's complaint. The fact that the District submitted a continuance request an hour after the scheduled PHC does not excuse the District's conduct when Mr. Osher contacted Parent the day before the scheduled PHC and could have made the written continuance request before the PHC.

Additionally, the District in its complaint, continuance motion and a PHC statement did not inform OAH that Parent is deaf and requires telephonic assistance. OAH was only informed of this by the District 30 minutes before the scheduled time for the PHC to begin. The District and Mr. Osher are presumed to have known this fact based on their prior contacts with Parent based on Parent's attendance at individualized educational program team meetings and Mr. Osher's contact with Parent to discuss continuing the mediation and hearing dates.

Therefore, the District is ordered to show cause why the District's complaint should not be dismissed for failing to file a complete PHC statement and not timely informing OAH that Parent was deaf and OAH would need to arrange for communication assistance for the PHC for Parent. **The District is ordered to file a written response and a complete PHC statement with OAH by no later than 5:00 p.m., on January 16, 2013,** by facsimile transmission to (916) 376-6319. A copy of the response and PHC statement shall be served upon Student by overnight delivery. Student shall submit his PHC statement to OAH and the District by either facsimile transmission or overnight mail by 5:00 p.m., on January 17, 2013.

The District's response shall address why his representative did not file a complete PHC statement, the subsequent continuance request before the scheduled PHC, nor inform OAH of Parent's deafness and need for telephonic assistance before the January 16, 2013 PHC, in spite of having additional contact with OAH via its subsequent continuance request, and withdrawal of that continuance request. **The District's written response shall address why OAH should not order the dismissal of the District's complaint.**

The continued PCH and order to show cause hearing shall take place telephonically on January 18, 2013, at 10:00 a.m. Failure of the District and its legal counsel to comply with this order may result in additional sanctions.

ORDER

1. An Order to Show Cause as to Why the District's Complaint Should Not be Dismissed is hereby issued. The District is ordered to file a written response and a complete PHC statement with OAH by 5:00 p.m., on January 16, 2013. Student file submit his PHC statement with OAH by 5:00 p.m., on January 17, 2013.
2. All dates in this matter shall remain as calendared pursuant to the January 2, 2013 scheduling order, except that the PHC is continued to 10:00 a.m., on January 18, 2013.
3. A telephonic order to show cause hearing shall be convened at 10:00 a.m., on January 18, 2013.

Dated: January 16, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings