

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013061085

ORDER GRANTING REQUEST FOR
CONTINUANCE AND SETTING
MEDIATION, PREHEARING
CONFERENCE, AND DUE PROCESS
HEARING DATES

On July 22, 2013, Torrance Unified School District (District) filed a request (Motion) to continue the mediation, prehearing conference (PHC), and due process hearing (DPH) dates in this matter, on the grounds that District's counsel's schedule conflicts with the currently set dates. District's counsel is scheduled to be out-of-town on both the mediation date of July 30, 2013, and the due process hearing date of August 13, 2013. Specifically, the Motion requests that the mediation be continued to August 28, 2013, the PHC be continued to November 4, 2013, and the DPH be continued to November 18, 20, and 21. On July 26, 2013, Parent and Student (collectively, Student) opposed the Motion on the grounds that the District is seeking a lengthy continuance of the PHC and DPH dates, and that the currently scheduled mediation date of July 30, 2013, PHC date of August 12, 2013, and DPH date of August 20, 2013, permit the matter to be resolved before school begins on September 6, 2013.

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).)

ANALYSIS

The currently scheduled dates are the initial dates scheduled unilaterally by OAH in the Scheduling Order issued by OAH on June 27, 2013. These dates conflict with District’s counsel’s availability, and the Motion demonstrates that her out-of-town plans were scheduled prior to the time that OAH issued its Scheduling Order. Furthermore, the evidence reflects that District’s counsel promptly requested that Student’s counsel agree to a continuance of the matter. The unavailability of a party’s attorney under these circumstances constitutes good cause for a continuance. Contrary to Student’s contention, the District’s proposed mediation date of August 28, 2013, would permit the parties to resolve the matter prior to September 6, 2013, the date Student starts school. However, and also contrary to Student’s contention, the current DPH date of August 20, 2013, would not permit a hearing to be held and a decision to be rendered prior to the date Student starts school. Further, District’s proposed continuance of the hearing for approximately 90 days from the currently scheduled hearing date is not too lengthy pursuant to OAH’s continuance policies.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

Granted. All dates are vacated. This matter will be set as follows:

Mediation:	August 28, 2013, at 9:30 a.m.
Prehearing Conference:	November 4, 2013, at 1:00 p.m.
Due Process Hearing:	November 18, 2013, and November 20-21, 2013, and continuing day to day, Monday through Thursday, as needed, at the discretion of the Administrative Law Judge. Hearing to start at 1:30 p.m. on November 18, and, unless otherwise ordered, at 9:30 a.m. on all other hearing days.

IT IS SO ORDERED.

Dated: July 26, 2013

/s/

ELSA H. JONES
Acting Presiding Administrative Law Judge
Office of Administrative Hearings