

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

TORRANCE UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2015020519

ORDER DENYING REQUEST FOR
CONTINUANCE WITHOUT
PREJUDICE

On February 11, 2015, Torrance Unified School District filed with the Office of Administrative Hearings a due process hearing request that sought to defend its assessments and exit Student from receiving special education and related services. OAH granted continuance requests on February 23, 2015 and May 20, 2015. Father, on behalf of Student, sought the last continuance, which District did not oppose, due to a death in the family. The matter is presently set for a prehearing conference on August 14, 2015, and hearing on August 25 – 27, 2015. On August 3, 2015, attorney Craig Liu filed a notice of representation on behalf of Student.

On August 11, 2015, Mr. Liu, on behalf of Student, filed a request to continue the dates in this matter based upon Mr. Liu's recent representation of Student, and an undisclosed case conflict for the dates presently set for hearing. On August 13, 2015, attorney Sharon Watt, on behalf of District, filed an opposition to the continuance request, or in the alternative that OAH continue this matter to January 2016 based on Ms. Watt's unavailability, as set forth in the opposition brief.

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).)

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

Denied without prejudice. All prehearing conference and hearing dates are confirmed and shall proceed as calendared. Student has had sufficient time to obtain legal counsel from when District filed this matter in February 2015, and Student's legal counsel should have been cognizant when accepting to represent Student that OAH had granted two continuances and the conflict with his calendar, which is not specified in Student's moving papers. As to District's request in the alternative if OAH wishes to grant Student's motion and have the matter continued until January 2016, that delay is excessive as the case will be a year old when a decision is rendered. However, the week of August 31, 2015, may be available as OAH Case No. 2015070848, is presently set for the initial hearing date of September 1, 2015, and it is unknown if student in that case wishes to proceed to hearing on that initially set date, and following until that hearing is completed. Therefore, Student's motion is denied without prejudice, and District's counsel instructed to contact opposing counsel by close of business on August 14, 2015, in OAH Case No. 2015070848, as to whether that matter will proceed as presently scheduled. Accordingly, the matter shall proceed as presently scheduled, except that parties will be permitted to file a joint continuance request for hearing dates during the week of August 31, 2015.

IT IS SO ORDERED.

DATE: August 14, 2015

/s/

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings