

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. 2012100114

ORDER DENYING STUDENT'S  
REQUEST FOR CONTINUANCE;  
DENYING STUDENT'S MOTION TO  
DISMISS; AND STRIKING  
STUDENT'S "WITNESS LIST" FOR  
LATE FILING

On November 19, 2012, after the prehearing conference had been conducted, and three business days prior to hearing, Student filed a combined Request for Continuance and Motion to Dismiss. The Motion makes a series of statements that appear to explain Parent's lack of participation in the prehearing conferences as a product of not receiving documents from District and step-Father's religious activities causing him not to attend. The Motion further includes a "witness list," alludes to a claim that Student was hazed in 2010, and finally appears to argue that the matter should be dismissed because Parents have concluded Student will graduate from high school in December of 2012. On November 20, 2012, District filed its opposition, which argues that Parents at all times had notice of the prehearing conference and the expectations for preparing for hearing, that Parent's non-attendance at the prehearing conference is not excusable, that the motion is late, coming so close to hearing and after the prehearing conference, and that whether Student will graduate is speculative.

As discussed below, both motions are denied and Student's "Witness List" is not timely.

*Continuance*

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. Student's motion fails to establish good cause for a continuance. Student at all times was provided notice of the dates, times, and requirements for prehearing conferences and hearings, particularly the need to identify and exchange witness lists and documents for hearing in the prehearing conference statement and no later than five business days prior to the hearing. No adequate explanation was provided for Parent's repeated failure to participate in the prehearing conference, particularly by Student's Mother. To the extent Student is arguing that his perceived imminent graduation is good cause for a continuance, it is not. As noted by District, it is speculative. Finally, in October, Student's step-Father agreed to the current hearing dates and opposed any further continuance. Accordingly, Student's request for a continuance is denied and the hearing shall proceed at the dates and times scheduled.

#### *Motion to Dismiss*

Parents and school districts have the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9<sup>th</sup> Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].) Although OAH has granted motions to dismiss allegations that are facially outside of OAH jurisdiction, e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc...., OAH will not dismiss claims that have otherwise been properly pleaded.

Student fails to point to any authority that would require OAH to dismiss a pending due process hearing request that concerns the District's attempt to assess Student for purposes of offering a free appropriate public education, solely on the allegation that Student may at some point graduate from high school. Student's ground for dismissal would require a factual inquiry and is too speculative to result in dismissal. The fact that Student may someday graduate from high school does not render moot the District's obligation to provide a free appropriate public education prior to graduation. Accordingly, the motion to dismiss is denied.

#### *Witness List*

Finally, to the extent Student included a purported "Witness List" with the Motion, the "Witness List" is stricken, and will not be considered because it was not timely filed. Specifically, a "Witness List" was attached to the back of the motions, listing witnesses who would purportedly address Student's readiness to graduate in December of 2012 and a

“hazing” incident from 2010. Student’s “Witness List” was provided to District three business days prior to hearing on November 26, 2012, given that November 22-23, 2012 are state and national holidays.

OAH has repeatedly advised Student in OAH orders in this matter and other matters involving Student that special education hearings require documents that will be used as evidence and witness lists to be provided to District no later than five business days prior to hearing. (See Ed. Code, § 56505, subd. (e)(8).) As discussed above, Student has not demonstrated any justification for the failure to participate in the prehearing conference, despite being given numerous opportunities. Given the numerous written instructions given to Student regarding the importance of exchanging documents and witness lists, and Student’s unexcused failure to participate in a prehearing conference, the “Witness List” is stricken. Consistent with the prehearing conference order, Student will not be permitted to call witnesses that were not disclosed to District within five business days of the hearing start date on November 26, 2012.

IT IS SO ORDERED.

Dated: November 20, 2012

/s/

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RICHARD T. BREEN  
Presiding Administrative Law Judge  
Office of Administrative Hearings