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. 2013030530 ORDER DENYING REQUEST FOR FURTHER CONTINUANCE

On June 18, 19 and 20, 2013, this matter proceeded to due process hearing.

On June 20, 2013, District sought, and was granted a continuance for an additional hearing day, on the grounds that a witness who had been subpoenaed had failed to appear, and when telephoned by District's counsel, refused to appear voluntarily. District requested the continuance to compel this witness' attendance via Superior Court process. District's counsel, at the request of the Administrative Law Judge (ALJ), called the Superior Court for dates, and represented to the ALJ, on the record, that the Superior Court was setting hearing dates in six weeks, or approximately August 1. Therefore the matter was continued until August 13, 2013.

On July 16, 2013, District filed a "Motion to Keep Hearing Record Open," which is treated as a motion for further continuance. District's Motion incorrectly states that the ALJ's order continuing the matter to August 13 was an order "that the hearing record shall remain open."[1] District's Motion further states: (1) that on July 10, 2013, it filed its pleadings in Superior Court to compel the witness' attendance; (2) that upon filing the pleadings, District requested a Court date; (3) that upon making such request, District was told the soonest available Court date was November 26, 2013. District's Motion provides no explanation of why it delayed the filing of its Superior Court paperwork from June 20, until July 10, 2013. District's Motion seeks: (1) that the August 13, 2013 hearing date in this due process matter be "vacated," and (2) that the due process hearing be left "open" indefinitely until an unspecified future date when District succeeds in compelling the witness' attendance. On July, 17, 2013, Student opposed District's Motion. On July 18, 2013, District replied to Student's opposition. As discussed below, the Motion is denied.

[1] In light of the statutory time frames for deciding due process disputes, OAH does not leave hearings "open." Rather, in appropriate circumstances, continuances may be granted to definite future dates, for good cause.

APPLICABLE LAW

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).)

DISCUSSION

District's request for further continuance is denied. The scheduled August 13, 2013, hearing date is confirmed, and shall proceed as calendared. On June 20, District represented to the ALJ that the first available Superior Court date was in early August. However, District did not then proceed with reasonable diligence, but rather delayed the filing of its Superior Court paperwork from that day until July 10, 2013, by which time the Superior Court's available dates were farther out into the future. District has stated no explanation for why it delayed the filing of its Superior Court paperwork approximately 20 days, from June 20 until July 10. District has not established good cause for the indefinite delay it seeks in this due process matter.

ORDER

District's request for further continuance is denied. All prehearing conference and hearing dates are confirmed and shall proceed as calendared

Dated: July 19, 2013

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings