

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

HAWTHORNE SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015040036

ORDER FOLLOWING PREHEARING
CONFERENCE AND GRANTING
STUDENT'S UNOPPOSED MOTION
TO CONTINUE

On May 22, 2015, Administrative Law Judge Adrienne L. Krikorian, Office of Administrative Hearings held a telephonic prehearing conference. Attorney Constance Taylor appeared on behalf of Hawthorne School District. The ALJ made several attempts to reach Student's parents by telephone, calling the home phone number, and both parents' cell numbers, three times over 20 minutes. The home phone number was inoperable, Mother's number was busy, and Father's number did not give the ALJ an opportunity to leave a message. The ALJ requested available dates from District in consideration of Student's pending motion for continuance. No other matters were discussed. The PHC was not recorded.

1. Student's Motion to Continue

On May 21, 2015, Parent on Student's behalf filed a motion to continue the hearing for 90 days on the ground that Parent needed additional time to retain new legal counsel following prior counsel's withdrawal. On May 22, 2015, shortly before the PHC, OAH received a declaration on behalf of Student by an attorney. However, at the time of the PHC, OAH had received no notice of representation on Student's behalf from new counsel, and the declaration added nothing substantive directly from Parent to Student's motion. Student's motion did not offer new dates. District did not oppose the motion. District provided the ALJ with available dates, including requesting a date for mediation.

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).)

This is the third request for continuance in District's case. Good cause exists to grant Student's request, which District did not oppose. However, because of the time that will have elapsed between the filing of District's case and the new hearing dates, OAH does not contemplate granting any further continuances absent a substantial showing of good cause.

All dates are vacated and the matter shall be set as follows:

Mediation: July 30, 2015 at 9:30 a.m.

Pre-hearing Conference (telephonic): August 14, 2015 at 10:00 a.m.

Note: Student shall file a PCH statement in compliance with the April 1, 2015 Scheduling Order issued by OAH no later than 3 business days before the PHC. District shall timely serve its PHC statement filed with OAH on May 19, 2015, on Student's new legal counsel, if applicable. District is not required to file a new PHC statement unless it wishes to amend its previously filed statement

Due Process Hearing: August 25, 2015 at 9:30 a.m., August 26-27, 2015 at 9:00 a.m., and continuing day to day Monday through Thursday as determined by the ALJ.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

2. Settlement. The parties are encouraged work together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 P.M. THE DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035. THE PARTIES SHOULD ALSO LEAVE CONTACT INFORMATION SUCH AS CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. THE PARTIES SHOULD SIMULTANEOUSLY FAX THE SIGNATURE PAGE OF THE

SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT THE FAXINATION LINE at 916-376-6319.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement as noted above, the parties shall submit a request for a status conference and provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

3. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: May 22, 2015

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings