

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

MONTEBELLO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2015050560

ORDER FOLLOWING PREHEARING
CONFERENCE, CONTINUING
PREHEARING CONFERENCE AND
DUE PROCESS HEARING

On July 27, 2015, a telephonic prehearing conference was held before Administrative Law Judge Clifford H. Woosley, Office of Administrative Hearings. Attorney Carlos M. Gonzalez appeared on behalf of Montebello Unified School District. Attorney Hans A. Gillinger failed to appear on behalf of Student. The PHC was recorded.

Based on discussion of the parties, the ALJ issues the following order:

1. Attempts to Contact Student's Counsel.

ALJ Woosley telephoned Student's attorney, Mr. Gillinger, at 1:00 pm, July 27, 2015, to convene the prehearing conference and was directly connected to Mr. Gillinger's voicemail. OAH has only one phone number for Mr. Gillinger, which is the same number listed with the State Bar. ALJ Woosley left a message, stating the purpose of the call and indicating that he would call back in 15 minutes to convene the PHC. ALJ Woosley informed Mr. Gonzalez that the PHC would be continued for 15 minutes to give Mr. Gillinger an opportunity to be present.

At 1:15 pm, July 27, 2015, ALJ Woosley called Mr. Gillinger and was again immediately transferred to voicemail. ALJ Woosley left a second voicemail, indicating that the PHC would proceed with the District's attorney. ALJ Woosley further informed Mr. Gillinger via voicemail that an Order to Show Cause would issue, setting a telephonic conference date to determine why this matter should not be dismissed because of Student's failure to prosecute

2. District's Request for Continuance

District requested that the prehearing conference and due process hearing be continued, indicating that the presently scheduled hearing dates required the presence of District witnesses who were on summer break. The new school year had yet to begin.

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).)

Good cause exists for the continuance, since some of the District witnesses may not be available during summer break. Accordingly, District's request to continue is granted as follows:

Prehearing Conference:	10:00 a.m., September 11, 2015 (telephonic)
Due Process Hearing:	September 21, 22, 23 and 24, 2015, beginning at 9:00 a.m., except for the first day, which will begin at 1:30 p.m. The hearing shall continue day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. The hearing shall take place at District's offices, located at 123 S. Montebello Blvd., Montebello, CA 90640.

IT IS SO ORDERED.

DATE: July 27, 2015

/s/
CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings