

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. RIPON UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2010080302
RIPON UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2010090956 ORDER GRANTING REQUEST FOR CONTINUANCE AND SETTING PREHEARING CONFERENCE AND DUE PROCESS HEARING

On January 12, 2011, Evan Goldsen, attorney for Student, filed a request to continue the dates in this matter on the grounds that counsel had recently undertaken representation of Student and that he was unavailable for the prehearing conference (PHC) as currently set. Student further contends that the parties may resolve some of the issues in an upcoming individualized education program (IEP) meeting or resolve all issues through ongoing settlement discussions. This matter is currently set for a prehearing conference on January 24, 2011, and due process hearing on January 31, through February 4, 2011. Student requests the matter be set for some time after February 14, 2011.

On January 18, 2011, Stacie L. Power, attorney for the Ripon Unified School District (District), filed an opposition to Student's request to continue. District asserts that Student's requested continuance will deny District a right to a speedy resolution, Student has failed to show whether the conflicting matters were filed before this matter, the upcoming IEP will not resolve any matters in this case as it concerns a time period not at issue and that ongoing settlement discussions are not a basis for a continuance. Student failed to meet and confer with District prior to filing his request to continue.

DISCUSSION AND ORDER

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. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing

is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, the Office of Administrative Hearings (OAH) is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332 .) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

This matter was originally filed on August 10, 2010. Since then, it has undergone a consolidation with a District filed action and an amendment to Student's complaint. Additionally, the matter has been continued on several occasions due to Student's prior counsel's grave medical condition. The procedural history of this matter is summarized in OAH's November 24, 2010 Order Following Prehearing Conference, Granting Motion to Continue and Setting New Dates.

Student's contentions that an upcoming IEP meeting may resolve some issues and that the parties may settle all issues through ongoing settlement negotiations are not persuasive because they are speculative and are contradicted by District's contentions regarding the unlikelihood resolution.

With respect to Student's contentions that his recently retained counsel requires additional time to prepare and is conflicted on the dates in this matter, the record shows that OAH received notice on January 10, 2011, that Student had retained new counsel. Without evidence to the contrary, it is presumed that Student's counsel knew of the dates in this matter and of any conflicts on his calendar prior to undertaking representation. District's contention that any further delays in this matter will result in a denial of the right to a speedy resolution is persuasive, in light of the history of this matter. However, the equities weigh in favor of not penalizing Student for the actions of his counsel. Accordingly, a very short continuance of this matter is warranted.

OAH has reviewed the request for good cause and the request is granted in part. No further continuance will be granted without a showing of extraordinary circumstances. This matter will be set as follows:

Prehearing Conference:	January 31, 2011, at 10:00 AM
Due Process Hearing:	February 7 – 10, 2011, starting at 1:30 PM on February 7, 2011

Dated: January 20, 2011

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings