

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

APPLE VALLEY UNIFIED SCHOOL  
DISTRICT ,

vs.

PARENTS on behalf of STUDENT,

OAH CASE NO. 2008110141

PARENTS on behalf of STUDENT,

vs.

APPLE VALLEY UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2008120726

ORDER DENYING MOTION FOR  
RECONSIDERATION

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).) 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).)

This case filed in October 2008 and has been previously continued. The matter was set for hearing February 23-26, 2009. On February 12th, District's counsel asked for a short continuance and that the case be adjusted to begin 2 days later, February 25-26 and March 2-3. District's counsel stated in a declaration that attempts were made to call Student's counsel about this continuance but that the voicemail message system was full and he could not leave a message. District counsel also stated that he would make continued attempts to contact Student's counsel. OAH presumes that he did so. At the time that the District's motion was ruled on, Student had not filed a response. A response was received later in the day on February 17th (Student's recitation of the timeframes regarding issuance of the Order and receipt of its opposition is incorrect for it does not take into account the administrative processing of orders. To use an old phrase, these documents appear to have crossed in the mail). Without Student's objection to dates proposed by District at the time of ruling, it was assumed that Student had no conflict with those proposed dates.

Additionally, Student's claim, supported by declaration, that during the prehearing conference on February 5<sup>th</sup>, the parties had an agreement that District had agreed to fund an FAA is also incorrect. While the parties may have had an agreement in principle, that agreement was not a final agreement as evidenced by Student's later recitation in its motion for reconsideration that the assessment plan for the FAA was signed on February 10<sup>th</sup>. Speculative agreements, or agreements in principle and/or other claims of being close to some agreement or settlement do not constitute good cause to continue a matter. Furthermore, after acquired evidence, such as a subsequent assessment, likely has no relevance to a case filed in October 2008, particularly when such an agreement did not finally settle the case.

Moreover, in Student's counsel request for reconsideration of the order granting a short continuance, Student sets forth reasons why she is not available for the March 2-3 dates, reasons that had not been set forth in her opposition to that motion. While OAH is inclined to recast Student's motion for reconsideration into a motion for continuance and grant a continuance, it is unable to do so unless and until the parties meet and confer and provide to OAH firm dates for that the due process hearing can proceed.

#### ORDER

Therefore, the request has been reviewed by OAH and good cause does not exist at this time to further postpone this matter and Student's motion for reconsideration is denied at this time. This case will proceed to hearing on February 25-26 and Student may address her unavailability on March 2-3 with the hearing ALJ.

Alternatively, OAH will entertain a new, joint motion for continuance after the parties meet and confer and provide firm agreed dates for hearing. This motion must be filed immediately and those dates selected for hearing must be within the next 30 days unless the parties provide good cause as to why the agreed dates must exceed 30 days.

IT IS SO ORDERED.

Dated: February 19, 2009

/s/

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ANN F.MACMURRAY  
Presiding Administrative Law Judge  
Office of Administrative Hearings