

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN JOSE UNIFIED SCHOOL DISTRICT

OAH CASE NO. 2011030584

ORDER DENYING REQUEST FOR
CONTINUANCE

On May 6, 2011, Student filed a second request to continue the dates in this matter to September 2011, based upon the fact that a sibling will have a due process hearing in May 2011. The sibling's hearing takes place on May 18 and 19, 2011, these dates do not interfere with the dates in the instant case. Furthermore, Student argues that he will be out of the country after May 27, 2011. This too should not interfere with the scheduled hearing dates in the instant case. Student also argues that he desires mediation; there is still sufficient time prior to beginning the due process hearing on May 24, 2011, to schedule mediation should the parties wish to do so. Student failed to serve District with his second request for a continuance; the Office of Administrative Hearings (OAH) provided District a copy of the letter.

On May 10, 2011, District responded to Student's request for a continuance. District objects to a continuance being granted and accurately argues that a similar request was made prior to a prehearing conference on April 27, 2011. At that time a short continuance was granted over District objections. Student has presented no facts that establish good cause to continue this matter to September 2011.

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, 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).)

OAH has reviewed the request for good cause and the request is:

Denied. All prehearing conference and hearing dates are confirmed and shall proceed as calendared. The hearing can now be completed as scheduled, continuing the dates further would unduly delay these proceedings.

ORDER

1. Dates shall be maintained as scheduled: the prehearing conference will be held by telephone on May 16, 2011, at 10:00 a.m.; the due process hearing shall be held on May 24 through 26, 2011.

2. Student shall file a prehearing statement listing all witnesses and exhibits he intends to enter into evidence by May 11, 2011.

3. Student shall serve all document filed with OAH on District through its counsel and shall provide OAH with a proof of service.

4. Student shall be available by telephone and attend the prehearing conference on May 16, 2011.

Dated: May 10, 2011

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings