

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2011060184
2011050574

v.

MANTECA UNIFIED SCHOOL DISTRICT,
SAN JOAQUIN COUNTY OFFICE OF
EDUCAITON AND SAN JOAQUIN
COUNTY SPECIAL EDUCATION LOCAL
PLAN AREA

MANTECA UNIFIED SCHOOL DISTRICT,

OAH CASE NO. 2011050289

v.

PARENT ON BEHALF OF STUDENT.

ORDER GRANTING REQUEST FOR
CONTINUANCE AND SETTING TRIAL
SETTING CONFERENCE

On July 22, 2011, Parent, on behalf of Student, filed a motion to continue the dates in this matter due to unavailability of witnesses and Parent's work commitments. Parent determined that despite having agreement from the Manteca Unified School District (District), San Joaquin County Office of Education (County) and San Joaquin County Special Education Local Plan Area (SELPA), to the request to continue, a motion needed to be filed in order to explain why the parties sought a date for mediation more than 30 days beyond the originally set mediation in this matter.

On July 25, 2011, District filed a statement of non-opposition to the requested due process dates contained in Student's motion. On July 26, 2011, the County and SELPA filed a motion to continue and a motion for a trial setting conference, which agreed with the dates requested by Student, but asserted that the parties needed additional dates to determine the bifurcated issues in this matter prior to any mediation or due process hearing. District informed the Office of Administrative Hearings (OAH), on July 27, 2011, that it concurred with the County and SELPA's motions. Parent informed OAH, on July 28, 2011, that he intended to file a response, however OAH has not received a response.

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:

Granted. The undersigned has reviewed the prior orders in this matter. On July 21, 2011, Administrative Law Judge (ALJ) Eileen M. Cohn issued an order bifurcating the issues in this matter. The order determined that an issue as to residency exists, which must be determined before the remainder of the issues in this matter could proceed to a due process hearing. ALJ Cohn ordered that the issue of when the bifurcated hearing would take place would be addressed by the ALJ presiding at the prehearing conference.

Now the parties move for a continuance. County and SELPA assert that the dates proposed by Student do not allow sufficient time for a hearing and determination of the residency issue prior to the hearing on the remaining issues. They further contend that holding mediation prior to determining whether they should be parties to this case would require them to expend what may be unnecessary litigation resources and time should they ultimately be dismissed from this matter due to the residency issue. Their point is well taken and this matter is appropriate for a trial setting conference. Accordingly, the matter is continued as follows:

1. All dates are vacated.
2. A trial setting conference to set dates for a bifurcated hearing, mediation, prehearing conference and due process hearing is set for August 10, 2011, at 11:30 A.M.

IT IS SO ORDERED.

Dated: August 1, 2011

/s/

BOB VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings