

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT on behalf of STUDENT,

v.

TEMECULA VALLEY UNIFIED SCHOOL  
DISTRICT,

OAH CASE NO. 2009050559

---

TEMECULA VALLEY UNIFIED SCHOOL  
DISTRICT,

v.

PARENT on behalf of STUDENT.

OAH CASE NO. 2009060691

ORDER DENYING REQUEST FOR  
CONTINUANCE

On June 17, 2009, Administrative Law Judge Peter Paul Castillo issued an order granting the District's motion to consolidate the above-titled matters and denying the District's motion to continue the due process hearing in the consolidated matters from July 7 through 10, and July 13, 2009, to August 17 through 25, 2009.

On June 18, 2009, attorney Cynthia Vargas filed on behalf of District a motion for reconsideration of OAH's order denying the motion to continue.

On June 19, 2009, attorney Ellen Dowd filed on behalf of Student an opposition to District's motion.

Also on June 19, 2009, District filed a response to Student's opposition.

Judge Castillo is out of the office for the entire week, and not available to rule on a motion for reconsideration. However, because the motion for reconsideration involves only request for reconsideration of Judge Castillo's denial of District's request for a continuance of the due process hearing, it is appropriate for the presiding administrative law judge to rule on the motion because the presiding judge rules on all requests for continuance. Therefore, District's motion will be construed as a motion for continuance.

## APPLICABLE LAW

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 that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020.) In weighing motions for continuances in special education due process matters, the Office of Administrative Hearings (OAH) looks to California Rules of Court for guidance. Generally, continuances of matters are disfavored. (Cal. Rules of Court, 3.1332(c).)

## DISCUSSION

For purposes of background, it is noted that District filed the motion to consolidate, and Student opposed it. Student also asserted that if the motion to consolidate was granted, Student opposed any continuance of the hearing dates. Judge Castillo granted the motion to consolidate and denied the motion to continue.

District, in its motion for reconsideration of Judge Castillo's ruling, contends that Judge Castillo's order was issued before District was able to file a reply to Student's opposition to District's motion to consolidate and continue and, therefore, District's reply was not considered by Judge Castillo. It is noted that OAH rules on motions as soon as possible after a response is received from the party responding to the motion. OAH generally does not provide time for a reply to an opposition.

In considering District's reply, Student's opposition to that reply, and District's reply to Student's reply, it is determined that District has failed to establish good cause for a continuance. Among the reasons provided by District for the continuance are that Student is amending her complaint. Student asserts that she is not amending her complaint but, rather, asking OAH to use its broad equitable authority in considering remedies at the due process hearing. Student asserts that she included in her complaint the remedies known to her at the time the complaint was filed. Student's counsel's representation that she is not amending the complaint is accepted by OAH.

District also contends that Ms. Vargas will be out of state on a prepaid vacation during the hearing dates, several members of District staff on summer break, and District offices are closed on Fridays during the summer due to budget cuts. None of these reasons constitutes good cause for a continuance. Ms. Vargas works for a large firm, and another attorney can handle the hearing. The fact that a school district is on summer break is not good cause for a continuance. Issues involving witness availability and District closure on Fridays may be addressed at the due process hearing.

Based on the foregoing, and in application of the legal authority cited above, District's request for continuance is not supported by good cause and is denied.

ORDER

District's request for continuance is denied. All hearing dates and timelines shall proceed as calendared.

IT IS SO ORDERED.

Dated: June 22, 2009

/s/

---

DEBRA HUSTON  
Presiding Administrative Law Judge  
Office of Administrative Hearings