

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

SAN RAMON VALLEY UNIFIED  
SCHOOL DISTRICT,

v.

PARENT on behalf of STUDENT.

OAH CASE NO. 2009061134

ORDER DENYING STUDENT'S  
REQUEST FOR CONTINUANCE AND  
DEFERRING RULING ON  
DISTRICT'S MOTION FOR  
SANCTIONS

On August 26, 2009, attorney David J. Ramirez submitted on behalf of Student a request to continue the due process hearing in this matter. On August 31, 2009, attorney Ernest Bell submitted on behalf of District an opposition to Student's request to continue and also a motion for sanctions.

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).)

A presiding administrative law judge (ALJ)<sup>1</sup> in a special education proceeding is authorized to initiate contempt sanctions or to shift expenses from one party to another in certain circumstances. (5 C.F.R. § 3088; Gov. Code, § 11455.30 [hereafter Section 11455.30]; Cal. Code Regs., tit. 1, § 1040.) The ALJ may order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including attorneys fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. (5 C.F.R. § 3088; Gov. Code, § 11455.30; Cal. Code Regs., tit. 1, § 1040.)

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<sup>1</sup> Government Code section 11405.80 states: "'Presiding officer' means the agency head, member of the agency head, *administrative law judge*, hearing officer, or other person *who presides in an adjudicative proceeding*." (Emphasis added). An ALJ who presides in a special education adjudicative proceeding is the "presiding officer." (See *Wyner ex rel. Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1029 [court stated, "Clearly, § 3088 allows a hearing officer to control the proceedings, similar to a trial judge."].)

## ORDERS

The requests have been reviewed by OAH, and the following orders are made:

1. Good cause for continuance does not exist, the request for continuance is denied, all prehearing conference and hearing dates and timelines shall proceed as calendared.
2. The Administrative Law Judge will rule on District's motion for sanctions at the time of hearing, during which time Student will have the opportunity to respond.

IT IS SO ORDERED.

Dated: September 1, 2009

/s/

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DEBRA HUSTON  
Presiding Administrative Law Judge  
Office of Administrative Hearings