

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

NEW HAVEN UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2009101063

NEW HAVEN UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2009121104

ORDER DENYING REQUEST FOR
CONTINUANCE

On May 4, 2010, Student filed a request to continue the dates in this matter in order to give his independent assessor time to complete her observations and report. On May 6, 2010, District filed an opposition to the request. The prehearing conference is scheduled for May 17, and the hearing is scheduled for May 24 through 28, 2010.

On December 31, 2010, the Office of Administrative Hearings (OAH) issued an order consolidating these matters. On February 8, 2010, OAH granted Student's motion to amend his complaint. On March 19, 2010, the parties jointly requested a continuance that was granted on March 22. The matter is currently scheduled for the dates the parties requested.

Student contends that the hearing must be continued to give his independent assessor time to observe him, finish her assessment, and complete her report. Student is requesting that the hearing being continued to the week of June 14, 2010.

District opposes the continuance on several grounds. First, District's attorney, who is most familiar with the case, is unavailable the week of June 14, 2010, due to another hearing. Second, District contends that Student misunderstood the times available for observation, and his assessor could have observed him earlier than asserted in his request for a continuance. As a result, District argues that Student has not shown that his assessment cannot be concluded prior to the scheduled hearing. Finally, District contends that it has expended considerable time and expense preparing for the hearing as currently scheduled and would be prejudiced by further delay.

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, 3.1332 .) Generally, continuances of matters are disfavored. (Cal. Rules of Court, 3.1332(c).)

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

Denied. Student retained his expert on March 15, 2010, prior to the parties' joint request for a continuance that resulted in the current hearing dates. It was within Student's control to ensure that his assessor was available for the hearing dates that the parties requested. Student has failed to show good cause for a continuance. All prehearing conference and hearing dates are confirmed and shall proceed as calendared.

IT IS SO ORDERED.

Dated: May 6, 2010

/s/

JUDITH A. KOPEC
Presiding Administrative Law Judge
Office of Administrative Hearings