

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SANTA CLARA UNIFIED SCHOOL
DISTRICT,

v.

PARENT, ON BEHALF OF STUDENT.

OAH CASE NO. 2009110395

ORDER DENYING REQUEST FOR
CONTINUANCE

On April 9, 2010, Student filed a request for a continuance of the prehearing conference on May 3 and the hearing on May 10, 2010.¹ On April 14, District submitted its opposition.

Student requests a continuance because Student's new attorney will be out of the country and the attorney has not yet received the complete file from the prior attorney. As a result, the attorney believes he does not have sufficient time to prepare for the hearing. In addition, Student wishes to obtain an expert to assess and observe Student, and there is insufficient time to perform the assessment and prepare a report prior to the hearing.

District opposes the request because the hearing dates were set in this matter when Student's new attorney assumed representation on April 1, 2010. District contends that Student's attorney either agreed to represent Student knowing that the hearing conflicted with his vacation, or made vacation plans after agreeing to represent Student. District argues that Student's attorney has had sufficient time to prepare, and the need to obtain an expert witness is not sufficient for good cause.

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

¹ It is unclear whether Student is also requesting a new date for mediation, which is scheduled for April 29, 2010. Although captioned a request for a continuance of the prehearing and hearing dates, Student states, "Ideally the mediation date would also be moved"

(OAH) looks to California Rules of Court for guidance. 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 has not established good cause for the continuance request. This matter has been pending for over five months. The conflict in Student's attorney's schedule was avoidable. Two prior continuances have been granted. All previously scheduled dates are confirmed. If a party wishes to cancel or reschedule the mediation, the party should notify OAH.

IT IS SO ORDERED.

Dated: April 15, 2010

/s/

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