

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RESCUE UNION ELEMENTARY  
SCHOOL DISTRICT.

OAH CASE NO. 2010090516

ORDER DENYING REQUEST FOR  
CONTINUANCE

On September 23, 2010, Parents, on behalf of Student, filed a complaint seeking an expedited hearing to restrain disciplinary action against Student. The matter was calendared as an expedited hearing and a Scheduling Order issued accordingly.

On September 24, 2010, and by an addendum filed September 27, 2010, Parents sought a continuance of the matter to a date to be set by the Office of Administrative Hearings (OAH). On the same day, the District filed a notice that it did not oppose the grant of the continuance.

APPLICABLE LAW

A nonexpedited 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)(2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law, but a continuance of the hearing may be granted upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).)

An expedited due process hearing must be resolved more quickly. A parent of a child with a disability who disagrees with any decision by a school district regarding a change in educational placement of the child based upon a violation of a code of student conduct, or who disagrees with a manifestation determination conducted by the district, may request and is entitled to receive an expedited due process hearing. (34 C.F.R. § 300.532(a)(2006).) In such event, “(T)he SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed.” (34 C.F.R. § 300.532(c)(2) (2006).) There is no provision in the law for continuing an expedited hearing.

DISCUSSION

OAH lacks the authority to continue an expedited hearing beyond 20 school days after the complaint was filed, even if good cause is shown and the parties agree to a

continuance. Student's current status with respect to possible suspension, expulsion, or change of placement is not clear from the parties' filings. A party that decides that the matter no longer requires expedited resolution may request an order from OAH that the matter is no longer an expedited case and that the schedule be adjusted appropriately. Should Parents decide that the matter merits the filing of a new or amended complaint, expedited or nonexpedited, the timeline would begin again from the date of the filing of the new or amended complaint.

The motion to continue is denied.

Dated: September 28, 2010

/s/

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CHARLES MARSON  
Administrative Law Judge  
Office of Administrative Hearings