

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. MODESTO CITY SCHOOLS,	OAH CASE NO. 2010100921
MODESTO CITY SCHOOLS, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2010100325 ORDER DENYING REQUEST FOR TRIAL SETTING CONFERENCE

On November 15, 2010, District filed a request for a trial setting conference on the grounds that correspondence between the parties led District to believe that Student would not be available for the due process hearing on the currently set date of December 14, 2010, and would seek to continue the hearing into March 2011. On November 16, 2010, Student filed a response which did not oppose the request for a trial setting conference, but requested a different date than that requested by District. On November 16, 2010, District proposed additional dates and times for a trial setting conference.

DISCUSSION AND ORDER

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, the Office of Administrative Hearings (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, rule 3.1332 .) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

District contends that this matter is currently set for only one day of hearing on December 14, 2010, and will require at least three days of hearing. District asserts that

Student is unavailable for hearing on December 14, 2010, and will not be available for hearing until March 2011. Student has not disputed District's contentions.

While OAH initially calendars a due process hearing for one day, if the hearing requires additional days to be completed, absent a continuance, OAH expects the matter to proceed day-to-day until completed. Here, while District anticipates Student will request a continuance, OAH has not received a request for continuance. The matter remains calendared for a prehearing conference on December 8, 2010, and due process hearing on December 14, 2010. OAH schedules a trial setting conference in specific circumstances that are not present here. Accordingly, the request for a trial setting conference is denied.

IT IS SO ORDERED.

Dated: November 18, 2010

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings