

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CALIFORNIA HEALTH AND HUMAN SERVICES AGENCY; CALIFORNIA DEPARTMENT OF MENTAL HEALTH; TORRANCE UNIFIED SCHOOL DISTRICT; LOS ANGELES COUNTY DEPARTMENT OF MENTAL HEALTH.

OAH CASE NO. 2010110435

ORDER GRANTING REQUEST FOR CONTINUANCE AND SETTING PREHEARING CONFERENCE AND DUE PROCESS HEARING

On December 20, 2010, counsel for the California Health and Human Services Agency (CHHSA) and the California Department of Mental Health (CDMH) filed with the Office of Administrative Hearings (OAH) a Motion for Continuance of Due Process Hearing, with supporting declarations. The motion informs that a material witness who is serving a military obligation is unavailable to testify at the due process hearing in this matter until January 18, 2011.

On December 21, 2010, counsel for the Torrance Unified School District (District) filed with OAH a Motion to Continue Due Process Hearing, with supporting declarations. The District motion informs that a key witness is unavailable to appear at the due process hearing until after January 3, 2011.

On December 22, 2010, counsel for Student filed with OAH an Opposition to the motion for continuance brought by CHHSA and CDMH. On December 23, 2010, counsel for Student filed with OAH an Opposition to the motion for continuance brought by the District. In the Oppositions, Student contends that the unavailable witnesses are not relevant to the case, and that Student is willing to stipulate to facts and thereby obviate the need for such witnesses to testify.

On December 24, 2010, counsel for the District filed with OAH a Reply to the Student's Opposition.

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, rule 3.1332 .)

Each party in an administrative special education proceeding is entitled to due process which includes the right to call witnesses to testify at the hearing. Here, CHHSA, CDMH and the District have established that witnesses such parties wish to call at the due process hearing are unavailable on the initially scheduled hearing date in the matter. Good cause exists to grant a short continuance to permit such witnesses to testify.

Accordingly, the motions for continuance are granted. All dates are vacated. This matter will be set as follows:

Mediation:	N/A
Trial Setting Conference:	N/A
Prehearing Conference:	01/12/2011, at 1:30 p.m.
Due Process Hearing:	01/18/2011; 01/19/2011; 01/20/2011.

IT IS SO ORDERED.

Dated: December 24, 2010

/s/

TIMOTHY L. NEWLOVE
Presiding Administrative Law Judge
Office of Administrative Hearings