

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STANISLAUS UNION ELEMENTARY
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011050527

ORDER GRANTING REQUEST FOR
CONTINUANCE, SETTING DUE
PROCESS HEARING, AND DENYING
MOTION TO LIMIT DISCLOSURE OF
EXHIBITS AND WITNESSES

On June 9, 2011, a due process hearing was convened in this matter in Modesto, California, before Administrative Law Judge Bob N. Varma, Office of Administrative Hearings, Special Education Division (OAH).¹ Peter Sturges, Attorney at Law, represented the Stanislaus Union Elementary School District (District). Dr. Kristen Elgen, Assistant Superintendent and Special Education Director for District, was present. Also, present was Regina Hedin, the Director of Special Education for the Stanislaus Special Education Local Plan Area.

Parent was not present at the beginning of the due process hearing. A Spanish speaking interpreter was present and was duly sworn in. Prior to the arrival of the interpreter, a telephonic conference was held with Parent and District. Parent stated that she would not be attending the hearing because she believed she had been granted a continuance. Parent was informed that OAH had not received a motion to continue and that the matter had not been continued. Parent was encouraged to come to the hearing so that her request to continue could be heard on the record. Parent declined and stated she could not proceed further without an interpreter. The phone call was terminated.

Subsequent to the arrival of the interpreter, OAH and District attempted to contact Parent to determine if she would be attending the hearing. Parent called Ms. Hedin's cellular phone and refused to come to the hearing. Thereafter, a telephonic conference was held and was recorded. Based upon the motions heard in the teleconference, the ALJ makes the following orders:²

¹ This matter was reassigned to the undersigned following the prehearing conference. At the hearing, both parties were informed of the undersigned's prior employment history in the field of special education litigation. Both parties were given the opportunity to exercise a peremptory challenge, which both parties declined to exercise.

1. Motion to Continue: At hearing, Parent insisted that she had been granted a continuance on the grounds that she had mentioned the need for an attorney at the prehearing conference and had subsequently talked to OAH staff regarding a continuance.³ However, Parent had not been granted a continuance and at hearing her motion to continue was heard for the first time.

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

Parent contends that she wishes for herself and Student to be represented in the due process proceedings. Parent stated that she did not have information on attorneys and advocates who represent students with disabilities. However, Parent's assertion is not persuasive as OAH sent Parent a list of attorneys and advocates with the initial scheduling order in this matter. This matter was filed on May 12, 2011. Parent's first attempt to contact an attorney was the morning of the hearing, June 9, 2011. District contends that Parent and Student have previously been represented by two attorneys and four advocates. District asserts that Parent was attempting to delay the process and therefore, District opposes Parent's request for a continuance.

Parent's actions in seeking representation are minimal, at best. However, there have been no continuances in this matter and Parent should be given an opportunity to seek representation. Therefore, out of an abundance of caution, Parent's request to continue is granted. This matter will be set as follows:⁴

Further Prehearing August 15, 2011, at 1:30 PM
Conference:

² District also made a motion to determine Student's stay put placement. That motion will be addressed in a separate order.

³ On June 7, 2011, in a telephone conversation with OAH staff, Parent stated that she may file a motion to continue. On June 8, 2011, Parent sent District's counsel a letter in Spanish stating that Parent required 30 days to find legal representation. Parent believed that by sending District a letter, Student had been granted a continuance.

⁴ Due to the tardiness of the continuance request by Student, District's summer break was taken into consideration in setting the continued hearing dates.

Due Process Hearing: August 23, 24 and 26, 2011, at 9:30 AM

The 45-day time line to issue a decision in this matter is tolled, effective June 9, 2011. Should Student retain representation, the calendar conflicts of the attorney or advocate for Student shall not be considered good cause for a continuance of the due process hearing dates set out above.

2. Motion to Limit Disclosure of Exhibits and Witnesses: District moved to limit the disclosure of exhibits and witnesses. District asserts that neither party should be allowed to disclose any further exhibits or witnesses. Student did not have a response to District's motion.

Education Code section 56505, subdivision (e)(7), provides for disclosure of witnesses and exhibits "at least" five business days prior to the hearing. District did not establish how it would be prejudiced if Student disclosed exhibits or witnesses at least five business days before the next calendared hearing date. Furthermore, it would defeat the purpose of granting Student's motion to continue, in order to obtain representation, if the parties were restricted from disclosing any exhibits or witnesses. Accordingly, District's motion to limit the Disclosure of exhibits and witnesses is denied.

ORDER

1. Student's motion to continue is granted.
2. A further prehearing conference is set for August 15, 2011, at 1:30 p.m.
3. The due process hearing is continued to August 23, 24 and 26, 2011.
4. The 45-day time line to issue a decision is tolled, effective June 9, 2011.
5. District's motion to limit the disclosure of exhibits and witnesses is denied.

Dated: June 15, 2011

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings