

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TEMECULA VALLEY UNIFIED
SCHOOL DISTRICT AND RIVERSIDE
COUNTY DEPARTMENT OF MENTAL
HEALTH.

OAH CASE NO. 2011060230

ORDER GRANTING REQUEST FOR
CONTINUANCE

On June 3, 2011, Parent on Behalf of Student (Student) filed a Request for Due Process Hearing against Temecula Valley Unified School District (District) and Riverside County Department of Mental Health (RCDMH). On June 6, 2011, OAH issued a scheduling order setting the following dates: mediation; prehearing conference (PHC), July 20, 2011; and due process hearing, July 28, 2011. On June 7, 2011, Student filed a notice stating that he would not be participating in mediation. In that notice, he added that five days were required for the due process hearing.

On July 1, 2011, Student filed a Motion to Confirm Hearing Dates and To Add Additional Days. Student requested that OAH confirm the hearing date currently set with additional days following consecutively (furlough days excluded). Student requested that the hearing be scheduled by September 1, 2011. Student did not want to proceed to hearing after September 1, 2011 as his counsel was unavailable the week of September 1, 2011, and he did not want the hearing to be delayed beyond that time. Student stated that he had discussed dates with District and that District stated that it was “off” for the summer and would not have witnesses available until August 22, 2011. Student stated that the week of August 22, 2011, was agreeable; however, RCDMH’s counsel represented that she was unavailable that week.

On July 5, 2011, District responded to Student’s motion. District acknowledged that the unavailability of its staff during summer was not good cause for a continuance, but that it was “taking steps” to confirm the availability of its staff witnesses upon their return from summer, August 10, 2011. District stated that it offered dates to Student, but did not provide the dates in its response, nor did it estimate the number of days required for its case. It requested that OAH accommodate its summer schedule, and commented on Student’s failure to confirm the number of days needed, and RCDMH’s change of its estimate of the number of hearing days required.

On July 5, 2011, RCDMH responded to Student's motion. RCDMH estimated that four days were required to complete the hearing. RCDMH proposed the following dates: July 28, August 1-2, August 4, and August 8, 2011.

APPLICABLE LAW

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).)

ANALYSIS

Student's motion for additional and future hearing days, is a request for continuance. OAH's initial scheduling order provides one hearing day. The hearing shall not proceed more than one day without the parties filing a motion to continue and obtaining an order from OAH. OAH provides a form with the scheduling order which allows the parties to agree upon dates to continue the PHC and the DPH. Given competing calendaring demands, when parties require more than one hearing day, the matter generally shall not proceed on the original hearing date followed by additional consecutive hearing days. After Student received the scheduling order, he notified OAH that he would not be participating in mediation and stated that he needed five days for the hearing. However, he did not provide OAH with the form attached to the scheduling order of proposed and agreed upon dates, or move to continue the matter. As a result OAH did not rule on the appropriateness of a continuance.

Student is willing- within limits - to accommodate the schedules of opposing parties and to continue the matter so that it is completed before September. In contrast, as of June 6, 2011, District knew the hearing schedule, but apparently did not take any steps until recently to attempt to confirm the availability of its staff members. In response to Student's motion, District did not provide precise information about its availability or hearing needs. RCDMH has provided several dates which should be acceptable to Student, but do not accommodate District. RCDMH may have additional dates, but it only provided dates closest to the original hearing date. According to Student, RCDMH is not available the week of August 22, 2011, the week Student stated that District was available. Other than providing a date when staff member's return, after August 10, 2011, District's response is silent as to when its witnesses will appear.

OAH has reviewed the request for good cause and the request is:

Granted. The telephonic PHC shall be held as scheduled on July 20, 2011, at 1:30 p.m.

The parties agree that the matter shall take more than one day, and upwards of five days, and should be continued to accommodate the time required to hear the matter. In view of the competing schedules of the parties, the number of issues alleged separately against RCDMH and District, the general availability of RCDMH's witnesses and witnesses that are not District staff members, the hearing is scheduled as follows: August 1, 2011, at 1:30 p.m., August 2, 2011, at 9:30 a.m., August 15, 2011, at 1:30 p.m, and August 16 through August 18, 2011, at 9:30 a.m.

The parties shall meet and confer prior to the PHC to schedule witnesses, and shall use their best efforts to schedule RCDMH personnel, and witnesses other than District witnesses, on August 1, and August 2, 2011. The parties shall present the witness schedule to the ALJ at the telephonic PHC.

IT IS SO ORDERED.

Dated: July 11, 2011

/s/

EILEEN M. COHN
Administrative Law Judge
Office of Administrative Hearings