

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BUCKEYE SCHOOL DISTRICT.

OAH CASE NO. 2011080665

ORDER DENYING REQUEST TO  
CONTINUE AND RESETTING TIME  
LINE

On August 29, 2011, the Buckeye Union School District (District) filed a motion to continue this matter on the grounds that District was not timely served with Student's Request for Due Process Hearing (complaint). The Office of Administrative Hearings (OAH) did not receive a response from Student.

APPLICABLE LAW AND DISCUSSION

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).)

Here, District seeks a continuance on the grounds that while Student's complaint was filed with OAH on August 16, 2011, it was not served upon District until August 22, 2011. District has provided a sworn declaration of counsel and supporting documentation confirming that it did not receive the complaint until August 22, 2011. District asserts that without a continuance it would not be given the statutory time to respond to the complaint or to file a Notice of Insufficiency (NOI). However, granting a continuance would not provide District with statutory time to file a response or a NOI, as it would not change the filing date of this matter, from which all other dates are calculated. Therefore, the motion to continue is denied.

The Individuals with Disabilities Education Act requires that a party filing a due process complaint serve the other party with a copy of that complaint. (20 U.S.C. §

1415(b)(7).) A party is not entitled to a due process hearing until these requirements are met. Because service of the complaint affects the 45-day time line for OAH to issue a decision, OAH may consider whether the time line should be reset *sua sponte*.

Here, District was served with the complaint on August 22, 2011. Accordingly, the 45-day time line to render a written decision in this matter will be reset to begin as of August 23, 2011. OAH shall issue a new scheduling order.

#### ORDER

1. District's motion to continue is denied.
2. The 45-day time line to issue a written decision is set to reflect August 22, 2011, as the date of filing of this matter.
3. All currently calendared dates are vacated. OAH shall issue a new scheduling order.

IT IS SO ORDERED.

Dated: September 6, 2011

/s/

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BOB VARMA  
Presiding Administrative Law Judge  
Office of Administrative Hearings