

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PACIFIC GROVE UNIFIED SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2012030540

ORDER GRANTING REQUEST FOR
CONTINUANCE AND SETTING
MEDIATION, PREHEARING
CONFERENCE AND HEARING
DATES

On March 22, 2012, Parents on behalf of Student (Student) filed a request to continue the dates in this matter with the Office of Administrative Hearings (OAH). On the same date, Pacific Grove Unified School District (District) filed a partial opposition to the motion, in which it conceded that District also wants to continue the matter.

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).)

District filed a request for due process (complaint) on March 14, 2012. On March 19, 2012, OAH served a Scheduling Order on the parties that set the hearing in this matter for April 11, 2012, with a telephonic prehearing conference on April 4, and a voluntary mediation on March 27, 2012. This the first continuance request in this case. Student requests a 90-day continuance in order to retain legal counsel, conduct independent assessments of Student, and hire experts to testify at the hearing. District objects that such a lengthy continuance is not warranted, but does not oppose a brief, one-week continuance because the current mediation and hearing dates pose “challenges” for the District.

Attached to the OAH Scheduling Order was an OAH form for the parties to use if they mutually agree to continue the initial hearing date. The form provides that the parties may agree upon dates within 90 days of the initial hearing date, and that, if the parties cannot agree on the dates, each side should submit proposed dates, or request OAH to set hearing dates within 90 days of the first date. In this case, both parties agree to continue the initial hearing date, but they disagree on the length of the continuance. Thus, OAH will generally

grant an initial continuance that does not exceed 90 days unless the circumstances indicate otherwise.

District's opposition establishes that a 90-day continuance would be prejudicial to the District because the hearing would be set in mid-July 2012, at a time when many District personnel needed for the hearing, including witnesses, would likely be on vacation or otherwise unavailable. However, District's proposed hearing date of April 18, 2012, is rejected as OAH is not conducting hearings the week of April 16, 2012, due to annual training. In addition, given the issues in this case involving three IEP meetings, District's estimate of one day for hearing is not accepted.

Student's request based on Parents' desires to hire experts and conduct assessments does not constitute good cause to continue the hearing. However, Student is entitled to a reasonable continuance in order to retain legal counsel. Student has promptly requested a continuance only eight days after District filed its complaint. Therefore, Student's motion establishes good cause to continue the hearing to dates prior to July 2012, as ordered below.

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

Granted. All dates are vacated. This matter will be set as follows:

Mediation: April 26, 2012, at 9:30 AM

Prehearing Conference: May 23, 2012, at 10:00 AM

Due Process Hearing: June 5, 6, and 7, 2012, at 9:00 AM

IT IS SO ORDERED.

Dated: March 23, 2012

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings