

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SULPHUR SPRINGS UNION
ELEMENTARY SCHOOL DISTRICT.

OAH CASE NO. 2011030961

ORDER DENYING REQUEST FOR
CONTINUANCE

On September 15, 2011, the parties filed a request to continue the dates in this matter. For the reasons set forth below, the request is denied and the hearing shall proceed as calendared.

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 for good cause. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 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).)

OAH has reviewed the request for good cause and the request is denied. All prehearing conference and hearing dates are confirmed and shall proceed as calendared. The due process hearing request in this matter was filed six months ago. The issues alleged date back to 2009. In general, Student alleges a failure to properly assess Student in numerous areas prior to the filing date of the due process request and that Student was denied a FAPE for 2010-2011 school year, which has now been completed. Student is presumed to have been ready to proceed to hearing on all issues as of the date of filing, such that current assessments are not highly relevant to the hearing issues.

Further, Student has had ample time to conduct settlement discussions, and ample time to complete any assessments for the purposes of settlement. As of May 27, 2011, the parties represented to OAH that they were working on an interim agreement that included assessments. A nearly four month continuance was granted at that time, which was more than sufficient to reach an agreement and conduct assessments. The parties were expressly warned that further continuances requests were not contemplated given the length of the continuance. In defiance of the prior continuance order, the parties did not even agree to the assessments referenced in the May 27, 2011 request until September 14, 2011. The actions of the parties show a clear disregard for the prior continuance order. Rather than support a further continuance, the complete failure of the parties to timely act after the last continuance

shows that good cause for a further continuance does not exist. For whatever reason, the parties themselves have squandered the extremely generous four additional months to attempt to settle the matter.

In sum, given the IDEA mandate for disposition of due process hearing requests within 45 days of the date of filing, and the parties' failure to take advantage of the generous continuance already granted, the parties have failed to demonstrate good cause for any further continuance. The matter shall proceed to hearing as scheduled.

IT IS SO ORDERED.

Dated: September 15, 2011

/s/

RICHARD T. BREEN
Presiding Administrative Law Judge
Office of Administrative Hearings