

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

BONITA UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011100843

ORDER DENYING WITHOUT
PREJUDICE REQUEST FOR SPECIFIC
ADDITIONAL DAYS OF HEARING

Student filed a due process complaint on October 21, 2011, against the Bonita Unified School District (District). The Office of Administrative Hearings (OAH) issued a Scheduling Order in this matter on October 26, 2011, setting this matter for a prehearing conference (PHC) on December 7, 2011, and for a due process hearing on December 15, 2011.

On November 7, 2011, Student filed a motion that requested four additional hearing dates consecutive to the presently set hearing date of December 15, 2011. The District filed an opposition to Student's motion on November 10, 2011. On November 14, 2011, Student filed a reply to the District's opposition. On November 15, 2011, OAH denied without prejudice Student's motion for additional hearing days because Student's counsel had not met and conferred with District's counsel regarding acceptable additional days for hearing.

On November 23, 2011, Student filed a motion for additional hearing dates of December 19 - 22, 2011, and asserted that Student's counsel had met and conferred with District's counsel, but could not reach agreement on additional hearing dates and that other attorneys in the law firm representing the District could handle the case on the dates requested. On December 1, 2011, the District filed an opposition to Student's request, which indicated that the District's counsel and the District are not available due to previously scheduled mediations. On December 1, 2011, Student filed a reply brief.

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).)

While the District's counsel is aware that the hearing can not be completed on the existing scheduled day for hearing, the District has not filed a motion for a continuance, even though the District is aware that Student requests that the hearing begin as scheduled on December 15, 2011.¹ On the other hand, Student fails to acknowledge the potential conflict of preexisting mediation dates on the District's counsel and the District's calendars. Accordingly, the appropriate venue to resolve this dispute is at the December 7, 2011 PHC. Therefore, Student's motion for specific additional days is denied without prejudice, and may be raised at the December 7, 2011 PHC.

IT IS SO ORDERED.

Dated: December 2, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

¹ The District is advised that if it is not available for hearing on December 15, 2011, that it should file a motion for continuance to be heard at the upcoming prehearing conference, or otherwise waive any argument that it is not available to commence the hearing on December 15, 2011.