

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BERKELEY UNIFIED SCHOOL
DISTRICT AND ALAMEDA COUNTY
BEHAVIORAL HEALTH CARE
SERVICES.

OAH CASE NO. 2012010446

ORDER DENYING REQUEST FOR
CONTINUANCE

On February 24, 2012, the Berkeley Unified School District (District) filed a request to continue the dates in this matter on the grounds that it was in the process of obtaining documents that it needed in order to address the issue of liability, and residency, and that this matter required more than one day of hearing. The motion stated that Alameda County Behavioral Health Services (Behavioral Health) did not object to the continuance request, however, Student was not in agreement with District's request. The Office of Administrative Hearings (OAH) confirmed that Behavioral Health did not intend to oppose the motion. Subsequently, Behavioral Health filed a notice joining in District's request. OAH was informed that Student intended to file an opposition, however, upon review of District's request, an opposition is not necessary.

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).)

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

Denied. All hearing dates and timelines shall proceed as calendared. District contends that it may not be the responsible local education agency for part or all of the time period in dispute in this matter because an education agency in Texas may have assumed

educational responsibility for Student.¹ District further states that it has been unable to obtain relevant documents from Texas. District has served subpoenas to try to obtain the documents, but it does not believe that it will have the documents prior to the hearing in this matter. District provides no information as why it holds such a belief. Finally, District states that because the case requires more than one day, it cannot proceed on the currently calendared date of hearing.

With respect to documents relevant to the issue of liability and residency, District has failed to establish good cause. The Individuals with Disabilities Education Act does not authorize discovery. District has failed to show that it will not receive documents pursuant to its subpoenas on the day of hearing, March 12, 2012. A continuance at this time, to allow District to obtain documents in advance of the due process hearing, would amount to permitting discovery.

With respect to the need for additional days, again District has failed to establish good cause. All parties, through their prehearing conference statements, state that the matter will require more than one day of hearing. OAH expects matters to continue on a day-to-day basis until completed. While District states that the matter requires additional hearing days, it has failed to provide any evidence to establish that is unavailable to proceed on consecutive days, starting on March 12, 2012. Accordingly, the request for continuance is denied.

IT IS SO ORDERED.

Dated: February 28, 2012

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings

¹ It appears that residency for purposes of determining the local education agency may be an issue in this matter. However, no party has sought a hearing on residency and this order does not make a finding on whether a motion to address the preliminary issue of residency would be granted. This order also does not make a finding regarding which party bears the burden as to residency and whether a school district can usurp another school district's responsibility to a child placed out-of-state.