

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

MANTECA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012051124

ORDER GRANTING MOTION FOR
CONTINUANCE AND SETTING
PREHEARING CONFERENCE AND
HEARING DATES

This matter is set for hearing beginning on July 18, 2012, with a prehearing conference (PHC) on July 9, 2012. On July 2, 2012, Student filed a joint request for a continuance until late November 2012, based on the claimed unavailability of Student's attorney. The attorney for the District also signed the motion.

1. Continuance: 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).)

Student's request for due process was filed on May 23, 2012. Neither party has requested a continuance previously in this case. OAH will generally grant the parties' first request to continue a hearing in order to add additional days and accommodate the schedules of the parties, for a period not to exceed 90 days in the absence of unique circumstances. The joint motion in this case is not accompanied by any evidence or detailed explanation as to why Student's attorney is not available for almost five months (except for a two-week window in August when District's attorney is not available).

Balancing the equities in this case, Student is entitled to a timely due process hearing. While a reasonable continuance may be permitted, there is no evidence to support an extensive continuance in this matter. The motion for a continuance is therefore:

Granted. All hearing dates are vacated. Based on the parties' request for a four-day hearing, the following dates are set:

Prehearing Conference: September 5, 2012, at 1:30 p.m.

Hearing (six days): September 17, 2012, at 1:30 p.m., and
September 18 - 20, 2012, at 9:00 a.m.

2. Mediation and Other Matters: The parties may meet and confer to set a date to voluntarily participate in mediation prior to the hearing and notify OAH. All other matters relevant to preparing for hearing, including clarification of issues and identification of witnesses and exhibits, will be addressed at the PHC on September 5, 2012.

3. Notice to Witnesses: The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing good cause to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

4. Settlement: Dates for the PHC and the hearing will not be cancelled until a letter of withdrawal or request for dismissal with the signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled PHC and the hearing unless different arrangements have been agreed upon by the assigned ALJ or otherwise ordered by OAH.

IT IS SO ORDERED.

Dated: July 3, 2012

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings