

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WEST CONTRA COSTA UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2011060369

ORDER GRANTING, IN PART,
REQUEST FOR CONTINUANCE AND
SETTING PREHEARING
CONFERENCE AND DUE PROCESS
HEARING

On December 5, 2011, the parties filed a joint request to continue the dates in this matter on the ground that they needed time to “see if the interim placement can work for the student.” This matter was filed on June 8, 2011. On July 5, 2011, the parties were granted a continuance on the ground that they had reached an interim agreement and desired time to see if Student’s new placement would be acceptable after 30 days of his attendance in that placement. On October 12, 2011, the parties were granted another continuance. At that time the parties informed the Office of Administrative Hearings (OAH) that they required additional time to provide Student additional support in his placement. The parties’ current request proposes hearing dates in March 2012.

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:

Granted, in part. If OAH were to grant the dates the parties propose, it could place the time for a written decision at approximately one year from the date of filing. The parties have already obtained two continuances on the grounds that they were testing out the placement in the interim agreement. There is nothing to suggest that this “test” period may not continue indefinitely. The parties initially asserted they only needed a test period of 30 days. They have successfully stretched that out to almost half of the school year. It appears the parties are using this action as a place holder while Student tests out whether to reach a

final resolution regarding his current placement issues. That is not an appropriate use of a due process hearing request and continuances cannot be used to avoid committing to a settlement or proceeding to hearing. The parties request does not constitute good cause. However, OAH will grant a short continuance so that the parties can either reach a full and final settlement or proceed to hearing. All dates are vacated. This matter will be set as follows:

Prehearing Conference: January 11, 2012, at 1:30 PM
Due Process Hearing: January 17 – 19, 2012, starting at 1:30 PM on
January 17, 2012

IT IS SO ORDERED.

Dated: December 5, 2011

/s/

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