

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LAFAYETTE SCHOOL DISTRICT.

OAH CASE NO. 2011090193

ORDER DENYING REQUEST TO ADD
ADDITIONAL DAYS FOR DUE
PROCESS HEARING

On September 16, 2011, the Office of Administrative Hearings (OAH) granted Student's request to add additional days for due process hearing to the original hearing date of November 1, 2011. The matter is currently set for hearing on November 1 through 3, 2011. On September 26, 2011, Student filed a request to add three additional consecutive hearing days. On September 28, 2011, the Lafayette School District (District) filed an opposition to Student's request. On September 29, 2011, Student filed a reply.

As a general rule, once a due process hearing begins, it will continue on consecutive hearing days until completed, unless the Administrative Law Judge (ALJ) assigned to the matter grants a continuance. OAH will assign more than one hearing day prior to the commencement of a hearing, if the parties jointly request additional days. Here, the September 16, 2011 order was based upon Student's request and a lack of opposition by District.

District objects to Student current request to add additional days on the ground of counsel's unavailability. District requests that any additional days be calendared after December 1, 2011. District's position that if additional days are required they should be scheduled after December 1, 2011, is actually a motion to continue the matter to December 1, 2011, following the first three days of hearing. However, the parties have not participated in a prehearing conference and it is unclear how many days of hearing the matter will actually require. Accordingly, the issue of whether additional days should be added is better suited for resolution at the prehearing conference. The ALJ assigned to the due process hearing shall determine the request at the time of the prehearing conference.

If a continuance following the November 3, 2011 hearing date is requested, the parties are advised that 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).)

The parties should come prepared to address this issue at the time of the prehearing conference.¹ Student's motion to add consecutive hearing dates is denied without prejudice.

IT IS SO ORDERED.

Dated: October 4, 2011

/s/

BOB VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings

¹ A review of Student's September 9, 2011 request shows that Student was requesting six consecutive days of hearing. District states that it did not oppose Student's September 9, 2011 request because it was being cooperative. OAH granted only three consecutive days. Student's current request is to add the other days Student had requested on September 9, 2011. District now objects to the same days it had previously not opposed on the ground of counsel's unavailability, something it admits it knew on September 9, 2011. District should be prepared to address this inconsistency in its position at the time of the prehearing conference.