

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LARKSPUR-CORTE MADERA SCHOOL
DISTRICT.

OAH Case No. 2014050563

ORDER FOLLOWING PREHEARING
CONFERENCE, DENYING REQUEST
TO CONTINUE HEARING, AND
CONTINUING PREHEARING
CONFERENCE ONLY

On September 5, 2014, a telephonic prehearing conference was held before Administrative Law Judge Theresa Ravandi, Office of Administrative Hearings. Amanda Metcalf, Attorney at Law, appeared on behalf of Student. Debra U. Ettinger, Attorney at Law, appeared on behalf of Larkspur-Corte Madera School District (District). The PHC was recorded.

Based on discussion with the parties, the ALJ issues the following order:

1. Student's Motion to "Provisionally" Dismiss Complaint and to Continue. This matter is scheduled for hearing beginning on September 15, 2014. On September 5, 2014, Student filed what he entitled a "Notice of Settlement and Request By Party to Provisionally Dismiss Due Process Hearing Request." Student also requested that all dates be continued for 30 days to allow the parties time to finalize a settlement agreement. The ALJ advised counsel that OAH does not "provisionally" dismiss matters. Student's request to provisionally dismiss this matter was denied.¹

During the PHC, Student renewed his request for a continuance to allow the parties time to finalize a written settlement agreement. District informed OAH that an agreement in principal had been reached, a written agreement had been circulated, and that District needed a few days to review changes proposed by Student. District agreed to continue the matter. This is the second request for a continuance.

¹ If parties execute a final written agreement which is contingent on Board approval, they may submit the signature page of the settlement agreement, inform OAH of the date of the next Board meeting which will consider the settlement agreement, and request that all dates be vacated and that a status conference be calendared following the Board meeting. Counsel are experienced practioners and expected to be aware of all OAH protocols, which are in place to ensure the all matters are expeditiously calendared in accord with legal timelines.

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 did not establish good cause for a continuance of the due process hearing. District represents that it will be able to complete its review of the proposed settlement agreement within a few days. Hearing is not set to commence until September 15, 2014. The parties did establish good cause to continue the PHC only. The PHC will be held on Friday, September 12, 2014, at 1:00 p.m. All other dates for hearing remain as previously set.

2. 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.

3. Other Matters. All other matters relevant to preparing for hearing, including clarification of the issue and identification of witnesses and exhibits, will be addressed at the prehearing conference on September 12, 2014. **Counsel are advised that in the event this matter is not dismissed, they must timely file PHC statements or timely file a continuance request, establishing good cause for such.**

4. Settlement. The parties are encouraged to continue working together to reach an agreement before the PHC and due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. Dates for the PHC and hearing will not be cancelled unless OAH receives a letter of withdrawal or request for dismissal with the signature page of a signed agreement.

IT IS SO ORDERED.

DATE: September 5, 2014

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings