BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

PLACENTIA-YORBA LINDA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023020915

ORDER GRANTING REQUEST FOR CONTINUANCE

JULY 14, 2023

On July 6, 2023, Student filed a request to continue the due process hearing with the Office of Administrative Hearings, called OAH. On July 11, 2023, Placentia-Yorba Linda Unified School District filed a non-opposition.

On April 6, 2023, OAH granted the parties joint request to schedule mediation and continue the due process hearing, and set the hearing to begin on June 20, 2023. On June 7, 2023, Student's motion to amend his complaint was granted, and OAH issued a new scheduling order, which further continued the hearing dates. The hearing is currently scheduled to begin on July 25, 2023. The declaration of Student's counsel established that he is not available on the new dates because he will be out of the country on a pre-planned vacation from July 16, 2023, through August 3, 2023, and

returning to his office on August 7, 2023. Student asks that the due process hearing be continued to August 15 through 17, 2023.

Placentia-Yorba Linda does not oppose a continuance but seeks dates in October due to its attorney's busy schedule. Placentia-Yorba Linda contends there is a conflict with the dates requested by Student, because re Student's attorney is scheduled to be in another hearing from August 15 through 17, 2023.

OAH must conduct a due process hearing and issue a decision within 45 days of receiving the due process complaint, unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Resolving the due process hearing quickly is legally required. Hearings may only be continued if "good cause" is established. (Ed. Code, § 56505, subd. (f)(3).) OAH is guided by the Administrative Procedure Act and the California Rules of Court when ruling on continuance motions. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.)

Good cause to continue a hearing may include:

- An essential lay or expert witness is unavailable because of death, illness, r other excusable circumstances,
- A party is unavailable because of death, illness, or other excusable circumstances,
- A party's attorney is unavailable because of death, illness, or other excusable circumstances,
- A new attorney substitutes in, but only if the party establishes that the substitution is required in the interests of justice,
- A new party is added, and the new party has not had a reasonable opportunity to prepare for trial, or other parties have not had a

reasonable opportunity to prepare for trial regarding the new party's involvement,

- A party is unable to obtain essential testimony, documents, or other material evidence despite diligent efforts, or
- The case has a significant and unexpected change which makes the case not ready for trial.

Generally, continuances are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

Student established good cause to continue the due process hearing to August 15, 2023, because his attorney is unavailable due to excusable circumstance. Although Placentia-Yorba Linda contends its attorney has a conflict with another due process scheduled for hearing on August 15, 2023, the other case was later-filed, and this case will be given priority. In addition, there is still time for the other matter to settle or be continued, and it is premature to determine whether dates will conflict.

However, because this is the third time hearing dates are being continued in this case, and the case has been pending for almost five months, no further continuances will be granted without a showing of extraordinary cause.

The request is granted. All previously scheduled dates are vacated. The new dates are:

PREHEARING CONFERENCE will be held on August 7, 2023, at 1:00 PM.

DUE PROCESS HEARING will be held on August 15 through 17, 2023.

The prehearing conference and due process hearing will be held by videoconference or telephone, unless otherwise ordered. The due process hearing will begin at 9:30 AM on all days, and generally end at 3:30 PM, unless otherwise ordered.

The hearing will continue day to day, as needed, Mondays and Fridays included, at the discretion of the Administrative Law Judge. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference. Late motions will only be considered if good cause is established for the late filing.

The parties must immediately give potential witnesses the hearing dates, and must subpoena witnesses, if necessary, so they are available to testify. Failing to properly notify or subpoena a witness is not good cause to delay the hearing.

IT IS SO ORDERED.

Alexa Hohensee

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings