BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

BERKELEY UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2023040764

# ORDER CONTINUING NON-EXPEDITED DUE PROCESS HEARING

MAY 12, 2023

On April 21, 2023, Berkeley Unified School District filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, called OAH, naming Student. Berkeley alleged two issues in the complaint. One issue requires an expedited due process hearing, which means OAH must hold the due process hearing within 20 school days of the complaint's filing and issue a written decision within 10 school days after the expedited hearing concludes.

On April 25, 2023, OAH issued a scheduling order to the parties, which set the due process hearings for the expedited issue and the non-expedited issue on the same

dates. The due process hearings are scheduled to begin on May 16, 2023. The parties did not request a continuance of the non-expedited due process hearing.

For non-expedited issues, 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, or 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).)

There is good cause to continue the due process hearing for the non-expedited issue, even though the parties did not request a continuance. Because the timelines for OAH to issue a decision in the expedited and non-expedited issues is different, it serves judicial efficiency and economy to hold two separate hearings to resolve the issues. Further, the due process hearing for the expedited case takes priority over the due process hearing for the non-expedited issue.

Accordingly, the due process hearing for the non-expedited issue is continued. The new dates are:

DUE PROCESS HEARING will be held on June 6, through 8, 2023.

The 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.

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.

*Tara Doss*

Tara Doss

Presiding Administrative Law Judge

Office of Administrative Hearings