BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ROSEVILLE JOINT UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2024050221

ORDER GRANTING REQUEST FOR CONTINUANCE AND SETTING PREHEARING CONFERENCE AND HEARING

MAY 31, 2024

On May 2, 2024, Student filed a request for due process hearing, complaint, with the Office of Administrative Hearings, OAH, naming Roseville Joint Union High School District.

On May 7, 2024, OAH issued a scheduling order setting the prehearing conference for June 10, 2024 at 3:00 PM and the hearing for June 18, 19, and 20, 2024.

On May 21, 2024, Roseville filed a request to continue the due process hearing with OAH. Roseville seeks a brief continuance as counsel Heather Edwards and representative Craig Garabedian are unavailable due to prescheduled vacations.

On May 28, 2024, Student opposed the request arguing a lack of good cause and because of the lack of proof of regarding the scheduling or payment for vacation plans.

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).)

OAH does not generally require the parties to demonstrate good cause for a first request for continuance. The parties are expected to meet and confer and agree on dates for a continuance. Here, Bayne's firm customarily does not agree to continuances or mediations sought by an opposing party and regularly fails to meet and confer. On the other hand, Roseville waited less than 24 hours for a response, before filing their motion. Bayne's firm has not opposed the specific dates sought for continuance or proposed any other dates for hearing.

Roseville accompanied the motion to continue with the declaration of Edwards, which established that she acts as lead counsel prepared to take the matter to hearing and that both she and Roseville's executive director of special education Garabedian, also a key witness, are both out of town on vacation during the dates OAH scheduled for hearing. Over Student's objections, Roseville has established good cause for a continuance. Local education agencies and students, generally, are allowed to have their counsel of choice present during due process hearings. Unavailability of a witness and counsel constitutes good cause for a continuance. The request seeks a brief continuance of a newly filed matter.

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

PREHEARING CONFERENCE will be held on June 28, 2024, at 1:00 PM.

DUE PROCESS HEARING will be held on July 9, 10, and 11, 2024.

Participant information sheets, or any changes thereto, must be filed at least two business days prior to the scheduled event.

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.

Cole Dalton

Cole Dalton
Administrative Law Judge
Office of Administrative Hearings