BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021020305

ORDER GRANTING REQUEST FOR CONTINUANCE AND SETTING PREHEARING CONFERENCE AND DUE PROCESS HEARING

MARCH 15, 2021

On March 10, 2021, Long Beach Unified School District filed, with the Office of Administrative Hearings, referred to as OAH, a request to continue the due process hearing in this case. Long Beach argues its attorney is unavailable to participate in the hearing scheduled to begin on March 23, 2021, because Long Beach and its attorney are scheduled to participate in a due process hearing in an earlier-filed OAH case. On March 12, 2021, Student filed a non-opposition to Long Beach's motion.

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 for good

cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (Ed. Code, § 56505, subd. (f)(3); Cal. Rules of Court, rule 3.1332(c).)

OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance or imposing conditions on the continuance; and any other relevant fact or circumstance. (Cal. Rules of Court, rule 3.1332(d).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

Granted. Due process hearings in earlier-filed OAH cases take priority over later-filed cases and Student does not oppose the continuance. All dates are vacated. The new hearing dates will be set as follows:

Prehearing Conference will be held on May 10, 2021, at 1:00 PM.

Due Process Hearing will be held on May 18, through 20, 2021. The hearing will begin at 9:30 AM, and generally end at 3:30 PM, on all days unless otherwise ordered.

The hearing will continue day to day, as needed, at the discretion of the Administrative Law Judge.

If the parties wish to schedule a mediation, they must agree to a date and submit the request to OAH as soon as possible. OAH will not grant another continuance in this case for the parties to participate in mediation, unless the parties show substantial justification.

The parties must immediately notify all potential witnesses of the hearing dates, and must subpoena witnesses if necessary, to ensure their availability to testify. Good cause for witness unavailability is not established by failing to properly notify or subpoena a witness. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference or with evidence of good cause for why it was not possible to file the motion by that date.

IT IS SO ORDERED.

Tara Doss

Tara Doss
Administrative Law Judge
Office of Administrative Hearings