BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT

v.

CLASSICAL ACADEMY HIGH SCHOOL.

OAH CASE NUMBER 2023100812

ORDER GRANTING MOTION TO RESCHEDULE MEDIATION AND TO CONTINUE THE PREHEARING CONFERENCE AND DUE PROCESS HEARING

FEBRUARY 5, 2024

On October 20, 2023, Student filed a request for due process hearing with the Office of Administrative Hearings, referred to as OAH, naming Classical Academy High School. On November 15, 2023, OAH granted the parties' joint request to set mediation for January 26, 2024, and continue the prehearing conference to March 8, 2024, and the due process hearing to March 10 through 21, 2023. On January 16, 2024, Student canceled the mediation and stated that the parties would seek to reschedule.

On February 5, 2024, the parties filed a joint motion to reschedule the mediation, and to continue the prehearing conference and due process hearing. The motion is supported by six declarations.

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).)

Classical Academy states that six essential witnesses, crucial to its case presentation, are unavailable for the scheduled hearing. The parties estimate that the hearing is expected to take seven or more days, because of the case's complexity, involving 17 issues and multiple school years. At the time the parties requested

mediation and continuance, Classical Academy was unaware that key witnesses and personnel would be unavailable during the week of March 25 through 29, 2024. The unavailable witnesses include the director of special education, Student's program specialist, and Student's occupational therapist, due to pre-arranged travel plans out of the country or out of state. Student's specialized academic instructors are also unavailable. Classical Academy asserts that its ability to present its case would be prejudicially compromised if it went to hearing without these essential witnesses.

Student is agreeable to the continuance. However, Student's counsel begins a federal court trial on April 9, 2024. Therefore, the parties request that the hearing be continued to April 30, 2024. Also, since the Student had to unexpectedly cancel the January 26, 2024 mediation, the parties request that the mediation be rescheduled for March 21, 2021.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The parties have cooperated with each other in seeking the continuance and rescheduling the mediation.

The parties have demonstrated good cause, and the joint motion to continue is granted and the mediation is rescheduled. However, the parties are on notice that this case will have been pending for over six months by the time it proceeds to hearing. Accordingly, further continuances will be viewed with disfavor as inconsistent with the IDEA's public policy of timely and efficient due process hearings.

All dates are vacated. This matter will be set as follows:

MEDIATION DATE is March 21, 2024, 9:00 AM to 12:30 PM.

MEDIATION will occur via telephone or videoconference.

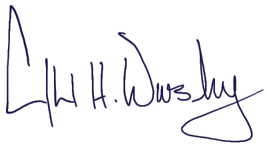
PREHEARING CONFERENCE will be held on April 22, 2024 at 1:00 PM.

DUE PROCESS HEARING will be held on April 30 through May 2, 2024.

ANY CHANGES TO THE PARTICIPANTS' EMAIL ADDRESSES PROVIDED BY THE PARTIES IN THEIR REQUEST MUST BE FILED TWO BUSINESS DAYS BEFORE THE SCHEDULED EVENT.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall 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 why it was not possible to file the motion by that date.

IT IS SO ORDERED.



Clifford H. Woosley
Administrative Law Judge
Office of Administrative Hearings