

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

MENDOCINO UNIFIED SCHOOL DISTRICT AND
LA VIDA CHARTER SCHOOL.

OAH CASE NUMBER 2021070162

ORDER DENYING MEDIATION REQUEST AND GRANTING
REQUEST FOR CONTINUANCE OF HEARING

SEPTEMBER 7, 2021

On September 2, 2021, the parties filed with the Office of Administrative Hearings, referred to as OAH, a joint request to set a mediation date and continue this matter, based upon the unavailability of counsel for two parties.

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).)

The joint request, filed by counsel under penalty of perjury, establishes that the attorneys for Student and Mendocino School District are both scheduled to appear in due process hearings in cases with earlier care numbers, which will take priority, on the dates set for this matter on September 28, 2021 through September 30, 2021. The current hearing dates were scheduled by OAH after Student amended the complaint on August 2, 2021. The parties seek a short continuance to October 19, 2021 through October 21, 2021.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is granted. All dates are vacated. Good cause is shown as the hearing dates in the earlier cases were scheduled by joint request, and are an excusable circumstance for counsels' unavailability on the dates recently set by OAH in this matter. This is also the first mediation request. This matter will be set as follows:

Mediation request for September 13, 2021, is denied as no further available mediation spots are available due to the mandatory ALJ staff meeting. Parties may resubmit the mediation request with different available dates.

Prehearing Conference will be held on October 8, 2021, at 10:00 am.

Due Process Hearing will be held on October 19, 2021 through October 21, 2021. The hearing shall begin at 9:30 am on all days unless otherwise ordered. The hearing shall continue day to day, as needed at the discretion of the Administrative Law Judge.

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.

Alexa Hohensee

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Administrative Law Judge

Office of Administrative Hearings