

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

ARVIN UNION SCHOOL DISTRICT.
OAH CASE NUMBER 2021070969

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

SEPTEMBER 28, 2021

On September 8, 2021, the parties jointly filed with the Office of Administrative Hearings, referred to as OAH, a request for a mediation and to continue the due process hearing on the grounds they wanted a mediation to attempt to resolve the matter. On September 10, 2021, OAH granted the request and issued an Order.

The parties attended the mediation, which resolved claims against one party. On September 24, 2021, the parties filed a joint request to continue this matter, based upon counsel having another due process hearing scheduled for the current hearing date of October 12, 2021, and the need for additional time to settle the case.

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).)

Here, Student's counsel is unavailable for the due process hearing and is scheduled to begin another hearing on the same day in OAH case number 2021040994, an older case than this one. Additionally, the parties request additional time to resolve and settle the case as to the remaining party. OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

Granted. All dates are vacated. The continuance request is granted. This matter will be set as follows:

Prehearing Conference will be held on December 3, 2021, at 3:00 PM.

Due Process Hearing will be held on December 14, through 16, 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.

Deborah Myers Cregar

Deborah Myers-Cregar
Administrative Law Judge
Office of Administrative Hearings