

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:
PARENT ON BEHALF OF STUDENT,

and

CABRILLO POINT ACADEMY.
OAH CASE NUMBER 2021080404
OAH CASE NUMBER 2021050168

ORDER DENYING REQUEST FOR MEDIATION AND
CONTINUANCE

SEPTEMBER 23, 2021

On May 6, 2021, Cabrillo Point Academy filed with the Office of Administrative Hearings, called OAH, a request for due process hearing in OAH case number 2021050168, Cabrillo's Case, naming Parents on Student's behalf.

On May 19, the parties jointly requested a mediation and continuance, and mediation was scheduled for July 1, 2021. On June 24, 2021, Student canceled the mediation, and informed OAH that Student would work with Cabrillo to reschedule the mediation. Instead, Student waited another two months until days before the scheduled due process hearing to file to file a request for due process hearing in OAH case

number 2021080404, Student's Case, naming Cabrillo and other parties that have since been dismissed. Cabrillo's Case and Student's Case were consolidated on August 19, 2021, and the consolidated cases were scheduled for hearing on October 5, through October 7, 2021 in the consolidation order.

On September 21, 2021, the parties filed a joint request to schedule a videoconference mediation, and sought a continuance of the due process hearing for that purpose.

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. Here, the parties received a continuance on May 19, 2021 to mediate in Cabrillo's Case, but that mediation was canceled on June 24, 2021 and the parties have made no effort to reschedule a mediation. On August 11, 2021, Student filed Student's Case and sought consolidation with District's Case, but the parties waited an additional month to request a second opportunity to mediate. The parties' current mediation and continuance request does not include a sworn declaration explaining the passage of over four months between requests to mediate. Without an explanation for the untimeliness of the current request, no good cause is shown.

Accordingly, the motion to schedule a videoconference mediation and continue the due process hearing is denied.

IT IS SO ORDERED.

Alexa Hohensee

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Administrative Law Judge

Office of Administrative Hearings