

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,

v.

EL MONTE UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2021080645

ORDER FOLLOWING PREHEARING CONFERENCE
GRANTING JOINT REQUEST FOR CONTINUANCE

OCTOBER 4, 2021

On October 1, 2021, Administrative Law Judge Rommel P. Cruz, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Attorney Melissa Amster appeared on behalf of Student. Attorney Ines Kuperschmit appeared on behalf of El Monte Union High School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

CONTINUANCE

At the PHC, the parties jointly requested a continuance of the hearing. The parties reached a settlement agreement as to portions of Student's claims, and the parties requested the hearing for the remaining claims proceed following the IEP teams' receipt and review of the findings and recommendations from publicly funded independent educational evaluations. The parties do not expect the independent evaluations to be completed until early 2022.

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 for a continuance is granted. The parties demonstrated good cause to continue the matter to allow Student's IEP team to obtain and consider independent educational evaluations before proceeding to hearing. This is the first continuance in this matter. However, no further continuances shall be granted. All dates are vacated. This matter will be set as follows:

Prehearing conference will be held on March 11, 2022, at 1:00 PM.

Due Process Hearing will be held on March 22, 23, and 24, 2022.

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 ALJ. PHC statements and motions are due to OAH no later than three business days before the PHC or with a showing of good cause why it was not timely filed.

At the PHC, El Monte Union indicated a hearing conflict for the week of March 28, 2022. The parties shall state in their PHC statements any hearing conflicts for dates immediately following the current dates for hearing.

Further, the parties shall immediately notify all potential witnesses of the hearing dates and shall subpoena witnesses, if necessary, to ensure that the witnesses will appear to testify. A party's failure to notify or subpoena a witness to testify will not be considered good cause to continue the hearing. The parties shall promptly communicate the hearing dates to potential witnesses, including assessors, as they are identified to ensure their availability for hearing.

FAILURE TO COMPLY

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

Rommel P. Cruz

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings