

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT

v.

INGLEWOOD UNIFIED SCHOOL DISTRICT AND
LOS ANGELES COUNTY OFFICE OF EDUCATION.

OAH CASE NUMBER 2021030057

ORDER FOLLOWING PREHEARING CONFERENCE
GRANTING REQUEST FOR CONTINUANCE

OCTOBER 25, 2021

On October 25, 2021, Administrative Law Judge Chris Butchko, Office of Administrative Hearings, held a telephonic prehearing conference. The Administrative Law Judge will be referred to as an ALJ. The prehearing conference will be referred to as a PHC. Jenny Chau and Robert Skeels, Attorneys at Law, appeared on behalf of Student. Jennifer Chamberlain, Attorney at Law, appeared on behalf of Inglewood Unified School District. Patrick Saldana, Attorney at Law, appeared on behalf of Los Angeles County Office of Education. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

On October 21, 2021. Student filed a motion to continue the prehearing conference and due process hearing due to a family emergency for Student's counsel, the parties' inability to complete agreed-upon independent educational evaluations, and Inglewood's unavailability for hearing. Student represented in the motion that Inglewood and Los Angeles County did not oppose the motion.

The motion was timely filed three days prior to the prehearing conference.

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 motion established good cause for a continuance. Hearing in this matter is scheduled to begin on November 9, 2021. Student's counsel would be unavailable due to the family emergency through at least November 22, 2021. In addition, the parties had reached agreement that Inglewood would provide independent educational evaluations to Student, but due to scheduling difficulties and the need to obtain a conservatorship over Student before the assessments could be conducted, only two of the eight assessments had been completed. The parties represented to the ALJ that they had been working diligently to get the assessments completed and would continue to do so. Accordingly, because Inglewood had limited availability, the parties agreed to hold the continued PHC on January 14, 2022, and the hearing on January 25 through 27, 2022.

This matter was previously continued on April 7, 2021. The complaint was subsequently amended on May 25, 2021, and a continuance was granted on July 9, 2021, for mediation on the amended complaint. This further continuance would be the second continuance entered in this matter since the amended complaint was filed. Good cause exists for a continuance due to a family emergency for Student's attorney and to allow necessary evaluations to take place. The parties represented that they have been working diligently to obtain the evaluation reports, but have been stymied due to circumstances connected to Student turning 18 years old and the difficulties of obtaining qualified assessors during the continued pandemic.

The requested length of the continuance is too great, however. The parties have established cause for a continuance, but have sought over three months' delay. In conversation with the ALJ, Inglewood reported that it was available to participate in the hearing if it were scheduled for mid-December 2021. Finding the request reasonable, the ALJ granted the continuance as follows:

Continued Prehearing Conference: December 3, 2021, at 1:00 PM.

All other prehearing matters shall be addressed at the continued prehearing conference. All prehearing motions must be filed three business days before the PHC.

Due Process Hearing: December 14 through 16, 2021.

The hearing shall begin at 9:30 AM daily, unless otherwise ordered. The hearing shall continue day to day at the discretion of the ALJ.

OAH is authorized to conduct due process hearings by videoconference or telephone. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) Based on state and federal guidance to address safety procedures due to the novel coronavirus, COVID-19, OAH will conduct the due process hearing by videoconference using the Microsoft Teams application. Unless otherwise ordered, participants are required to appear by videoconference using a webcam and Microsoft Teams.

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. Instructions for issuing and responding to subpoenas and optional forms for subpoenas can be found on the website at <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena>.

SETTLEMENT

The parties shall immediately inform OAH in writing if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. If the parties reach a

settlement within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

If a full and final written settlement agreement is reached after 5:00 PM the day before the hearing, the parties shall leave a voicemail message regarding the settlement at (916) 274-6035. The parties should also leave contact information such as cellular phone numbers of each party or counsel for each party. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH at <https://www.applications.dgs.ca.gov/oah/oahsftweb>.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

FAILURE TO COMPLY

Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

Chris Butchko

Chris Butchko

Administrative Law Judge

Office of Administrative Hearings