

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021030090

ORDER DENYING REQUEST FOR CONTINUANCE

OCTOBER 08, 2021

On October 8, 2021, Long Beach Unified School District filed with the Office of Administrative Hearings, called OAH, a request to continue this matter, based upon Student's delay in meeting and conferring regarding the scheduling of witnesses.

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, during a prehearing conference on October 4, 2021, OAH ordered the parties to meet and confer by October 7, 2021, to discuss scheduling witnesses, issues related to appearances by videoconference for hearing, eliminating duplicative exhibits, subpoenas, and whether they can stipulate to facts or evidence to shorten the length of time needed for the hearing. On October 7, 2021, OAH granted Student's request to extend the time to meet and confer to 2:00 pm on October 8, 2021.

Long Beach's motion asserts it is unable to schedule witnesses for the hearing because of the short time between the meet and confer and the hearing, set to begin on October 12, 2021. There is some merit to Long Beach's motion and OAH acknowledges the difficulty of scheduling witnesses for a hearing. However, this matter has been pending since May 2, 2021, as amended on August 12, 2021. Therefore, Long Beach has been aware of the issues alleged in this matter and the nature of the witness testimony necessary to analyze these claims for some time. Moreover, the prehearing conference order states that, in the event an agreement cannot be reached regarding the scheduling of witnesses, Long Beach shall have witnesses available.

For these reasons, Long Beach failed to establish good cause for a continuance and its request is denied.

ORDER

1. Long Beach's request for a continuance is Denied. All hearing dates are confirmed and shall proceed as calendared.
2. Should Student fail to meet and confer or to reach an agreement with Long Beach regarding the scheduling of witnesses, Long Beach shall only be responsible for scheduling its own witnesses for this matter.

IT IS SO ORDERED.


Paul H. Kamoroff (Oct 8, 2021 14:31 PDT)

Paul H Kamoroff

Administrative Law Judge

Office of Administrative Hearings