

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 2021040911

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

OCTOBER 20, 2021

On April 28, 2021, Student filed with the Office of Administrative Hearings, referred to as OAH, a request for due process hearing naming Long Beach Unified School District. The initial hearing dates were set for June 22, 23, and 24, 2021.

On May 21 2021, OAH granted the parties' request for mediation. On June 9, 2021, OAH granted the parties joint first request to continue this matter, based on the parties' claim that Long Beach had agreed to conduct assessments of Student at the start of the new school year. OAH continued the due process to November 2, 3, and 4, 2021. On October 19, 2021, the parties jointly filed a second request for continuance of

the due process hearing. The parties claimed in their request, which was signed by their attorneys, that Long Beach Unified had not yet been provided access to Student to conduct assessments, in part due to Student's unavailability due to medical issues, and they would like to complete the assessments and hold an individualized education program team meeting. The parties jointly requested a continuance of the prehearing conference to January 21, 2022, and the due process hearing to January 25, 26, and 27, 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).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The parties' request for hearing dates in late January 2022 will render this matter more than 10 months old by the time hearing is completed and a decision is issued. Whether or not an individualized education program team meeting has been held by the time of hearing is not good cause for a continuance based on the issues stated in the complaint. However, the parties have established good cause to grant one final continuance to allow Long Beach to complete assessments, the results of which may be relevant to the issues raised in the complaint.

The request to continue is granted. However, OAH will grant no further continuances, absent a declaration from counsel establishing extraordinary good cause for any further delays.

All dates are vacated. The prehearing conference is continued to January 14, 2022, at 1:00 p.m. January 21, 2022, the date the parties requested, is not at least five business days before the hearing date, as required by OAH.

The Due Process Hearing will be held by videoconference on January 25, 26, and 27, 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 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.

Adrienne L. Krikorian

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Administrative Law Judge

Office of Administrative Hearings