

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

NORTHERN HUMBOLDT UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2021070937

ORDER FOLLOWING PREHEARING CONFERENCE
GRANTING REQUEST FOR CONTINUANCE

OCTOBER 11, 2021

On October 11, 2021, Administrative Law Judge Tara Doss, from the Office of Administrative Hearings, held a prehearing conference via videoconference. The Administrative Law Judge will be called an ALJ. The prehearing conference will be called a PHC. Attorney Rick Ruderman appeared on behalf of Student. Attorney Leah Smith appeared on behalf of North Humboldt Union High School District. OAH recorded the PHC. Based upon discussion with the parties, the ALJ issues the following order:

MOTION TO CONTINUE

On October 6, 2021, Student's attorney filed a Notice of Representation and a Motion to Continue the due process hearing in this case, scheduled to begin on October 19, 2021. Student argued there is good cause for a continuance because Student's attorney needs time to obtain records, engage in settlement discussions, and prepare for the hearing. The request did not state Student's attorney conferred with North Humboldt's attorney regarding the continuance and did not propose new hearing dates. North Humboldt did not file a response to the continuance request and at the PHC did not oppose the motion.

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 has considered all relevant circumstances. The request is granted. There is good cause for a short continuance in this case to allow time for Student's recently retained attorney to obtain and review records, engage in settlement discussions, and prepare for a due process hearing. Accordingly, the case will proceed as follows:

Prehearing Conference: November 5, 2021, at 10:00 AM.

The PHC will be held via videoconference. All other prehearing matters will be discussed at the November 5, 2021 PHC. All prehearing motions must be filed at least three business days before the PHC, or the filing must establish good cause for why it was not filed by that date.

Due Process Hearing: November 16, through 18, 2021.

The hearing will be held via videoconference. The hearing will begin at 9:30 AM on all days of hearing, and generally end at 3:30 PM, unless otherwise ordered. The hearing will continue day to day, as needed, at the discretion of the ALJ.

The parties must immediately notify all potential witnesses of the hearing dates, and must subpoena witnesses, if necessary, to ensure the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed.

SETTLEMENT

The parties must immediately notify 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 must 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, on the day before hearing, the parties must 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 OAH receives and processes the letter of withdrawal or signature page of the signed agreement. If an agreement in principle is reached, the parties should plan to appear at 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 must 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.

Tara Doss

Tara Doss

Administrative Law Judge

Office of Administrative Hearings