

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

NEWARK UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021080439

ORDER FOLLOWING PREHEARING CONFERENCE,
GRANTING RECONSIDERATION AND GRANTING
CONTINUANCE

OCTOBER 25, 2021

On October 25, 2021, Administrative Law Judge Penelope Pahl, 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.

Damien Troutman, Attorney at Law, appeared on behalf of Student. Jennifer Fain, Attorney at Law, appeared on behalf of Newark Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

MOTIONS FOR RECONSIDERATION AND SECOND CONTINUANCE

On October 25, 2021, prior to the prehearing conference, the parties moved for a second continuance on several grounds. The motion was denied for failure to establish good cause for a second continuance. At the time of the prehearing conference, the parties jointly requested reconsideration of the denial.

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. Analogizing to the standards of the California Code of Civil Procedure, reconsideration motions are expected to be filed, generally, within ten days. (See, e.g., Code Civ. Proc., § 1008.) The party seeking reconsideration is also expected to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

Counsel for the parties offered new information as officers of the court and reconsideration was granted. Newark's counsel stated that she had been trying to secure updated information about Dr. Hamilton's health status from the district for several days. A recess was taken during the PHC to allow counsel another opportunity to secure more specific information from Newark. Counsel received no reply from Newark during the recess, or in the days prior to the PHC, other than that Dr. Hamilton, Newark's special education director, has not returned to work due to an extended illness. Counsel reiterated that Newark's special education director is unable to prepare for hearing. Student's counsel's hearing preparation has also been limited due to a family member's medical condition. Additionally, Ms. Fain has pre-paid travel plans beginning November 17, 2021.

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. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

Due to the unavailability of a key witness and district representative in the case, as well as counsel unavailability, the parties' joint motion for a second continuance is granted. All currently scheduled dates are hereby vacated. The new dates are:

The PREHEARING CONFERENCE will be held on November 29, 2021 at 3:00 pm. All other prehearing matters are deferred to the next PHC.

The HEARING will be held on December 7, 8, and 9, 2021.

The hearing shall begin at 9:30 AM each day and generally end at 3:30 PM, unless otherwise ordered. Additional hearing dates will be discussed with the ALJ during the hearing.

HEARING LOCATION

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 are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached 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. 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>.

If a full and final written settlement agreement is reached after 4:00 PM the day prior to 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.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed 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.

IT IS SO ORDERED.

Penelope S. Pahl

Penelope S. Pahl

Administrative Law Judge

Office of Administrative Hearings