

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

V.

ELK GROVE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021050530

ORDER GRANTING JOINT MOTION FOR RESCHEDULING
SECOND VIDEOCONFERENCE MEDIATION AND
CONTINUANCE OF DUE PROCESS HEARING

NOVEMBER 29, 2021

On May 17, 2021, Student filed a request for due process with the Office of Administrative Hearings, referred to as OAH. On July 1, 2021, OAH granted the parties joint request and set mediation for July 14, 2021, and continued the hearing to September 14, 2021. On August 17, 2021, OAH granted the parties' joint stipulation and motion and set a second mediation for October 26, 2021 and continued the due process hearing to December 7, 2021. The parties were unable to mediate on October 26, 2022, because Student's counsel was ordered to attend a hearing in another due process hearing. On November 23, 2022, the parties filed a joint motion, supported by

declaration of counsel, seeking to reschedule the second mediation and continue the hearing.

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, the parties effectively participated in mediation on July 14, 2021. The parties agreed to resolve many issues, including the services Student will receive to start the 2021-2022 school year, in an in-person setting. The parties also agreed to independent evaluations. One remaining evaluation will be completed and reviewed by Student's IEP team in early December 2022. The parties seek the rescheduling of the

second mediation because they believe the evaluations have provided a basis to resolve the remaining issues and wish to avoid the expense of preparing and participating in a hearing. The initial mediation was effective and the scheduled second mediation was cancelled because of an unforeseen calendaring conflict with another hearing. The parties anticipate the second mediation will be similarly productive and likely resolve any outstanding issues, avoiding the expense and delay of continued litigation.

Continuances are disfavored. Here, however, OAH has considered all relevant facts and circumstances and find good cause to grant the motion. The parties have demonstrated concerted and cooperative efforts to resolve the issues without need of a due process hearing.

The motion is granted. However, the parties are on notice that this case will have been pending for over six months by the time it proceeds to hearing. Accordingly, no further continuances will be granted, absent extraordinary good cause. All dates are vacated. This matter will be set as follows:

MEDIATION DATE is January 18, 2022, 9:00 AM to 4:30 PM.

MEDIATION will occur via telephone or videoconference.

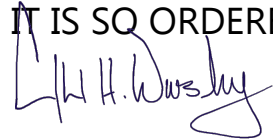
PREHEARING CONFERENCE will be held on February 4, 2022, at 3:00 PM.

DUE PROCESS HEARING will be held on February 15, 16, and 17, 2022.

ANY CHANGES TO THE PARTICIPANTS' EMAIL ADDRESSES PROVIDED BY THE PARTIES IN THEIR REQUEST MUST BE FILED TWO BUSINESS DAYS BEFORE THE SCHEDULED EVENT.

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. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference or with a showing of good cause why it was not possible to file the motion by that date.

IT IS SO ORDERED.

A handwritten signature in blue ink, appearing to read "Clifford H. Woosley", written over the text "IT IS SO ORDERED."

Clifford H. Woosley

Administrative Law Judge

Office of Administrative Hearings