

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENTS ON BEHALF OF STUDENT,

and

ORINDA UNION SCHOOL DISTRICT,

OAH CASE NUMBER 2021070616

OAH CASE NUMBER 2021110064

ORDER DENYING REQUEST FOR MEDIATION AND

CONTINUANCE OF DUE PROCESS HEARING

NOVEMBER 9, 2021

On July 19, 2021, Student filed a Request for Due Process Hearing, called a complaint, with the Office of Administrative Hearings, called OAH, naming Orinda Union School District. On August 9, 2021, OAH granted the parties' joint request to schedule a mediation and continue the due process hearing. At the parties' request, OAH set the mediation for September 10, 2021, and the due process hearing to begin on October 26, 2021. On September 10, 2021, the parties participated in mediation but did not resolve the case. On October 13, 2021, OAH granted Student's request to amend the complaint,

which reset the hearing dates. OAH issued a scheduling order setting the due process hearing for December 7, through 9, 2021.

On October 29, 2021, Orinda filed a complaint with OAH naming Student, and a Motion to Consolidate its case with Student's case. On November 4, 2021, OAH granted consolidation and ordered the consolidated cases to proceed to hearing on December 7, 2021. On November 9, 2021, the parties jointly filed a request for mediation and continuance of the due process hearing. The parties did not include facts to establish good cause for a second mediation or further continuance of 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).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is denied. The parties seek a mediation and a continuance of the due process hearing until February 1, 2022. However, the parties failed to include any facts to establish good cause for a second mediation or for a two-month continuance. Orinda filing its own complaint and consolidation of the cases, alone, do not establish good cause for the parties' request. Student's case will have been pending for almost five months by the date of the currently set hearing. OAH has a duty to hold a due process hearing and resolve the parties' issues within a reasonable time. Accordingly, the request is denied. All prehearing conference and hearing dates will proceed as scheduled.

IT IS SO ORDERED.

Tara Doss

Tara Doss

Administrative Law Judge

Office of Administrative Hearings