

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 GRANTING MOTION FOR SECOND MEDIATION
AND CONTINUANCE OF DUE PROCESS HEARING

NOVEMBER 17, 2021

On November 16, 2022, the parties filed with the Office of Administrative Hearings, referred to as OAH, a joint motion for a second mediation and a continuance of this matter, based upon new issues in Student's amended complaint and the unforeseen unavailability of counsel.

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).)

PROCEDURAL HISTORY

On July 19, 2021, Student filed a request for due process hearing naming the Orinda Union School District. OAH set an initial hearing date of September 14, 2021. On August 9, 2021, OAH granted the parties' joint request for mediation and continuance, setting the hearing for October 26, 2021. The parties participated in mediation on September 10, 2021.

On October 11, 2021, Student filed a motion to amend Student's Complaint. On October 13, 2021, OAH granted Student's motion and issued a new scheduling order setting the hearing for December 7, 8, and 9, 2021. On October 29, 2021, Orinda Union filed a request for due process hearing, naming Student, and a motion to consolidate Student's case with Orinda Union's case. At the time, Orinda Union agreed that the

consolidated matter could proceed to hearing on December 7, 2021, as scheduled in Student's case. OAH consolidated the two cases and retained the December 7, 2021 hearing date. On November 9, 2021, OAH denied the parties' request for mediation and continuance, noting an inadequate showing of good cause for a continuance to February 2022.

DISCUSSION

The parties' joint motion is supported by the declarations of Student's attorney Roberta Savage, Orinda Union's attorney Jennifer Baldassari, Orinda Union's director of student services Dr. Carrie Nerheim, and Orinda Union's instructional support teacher Marissa Hay. The parties seek a second mediation and a continuance of the hearing.

The parties request a second mediation because the consolidation with Orinda Union's complaint and the amendment of Student's complaint have added substantive issues which the parties would like to mediate with a trained mediator. Both parties contend they would be able to address all the issues at a second mediation, increasing the likelihood of resolution without a hearing. The motion, and supporting declarations and documents, show that the parties worked collaboratively in seeking another mediation. This cooperative demeanor indicates that the parties will devote themselves to productive negotiation at a second mediation. The request for a second mediation is granted.

On November 9, 2021, Orinda Union's attorney was informed of the need of a medical procedure, which is scheduled December 9, 2021 and which requires a day of preparation on December 8, 2021. Dr. Nerheim states that Orinda Union has represented Orinda Union since this matter's initial filing and is knowledgeable of the facts and issues related to this matter. Orinda Union contends it would be prejudiced if

required to proceed to hearing represented by another attorney. Also, instructional support teacher Hay has attended all of Student's individualized education program team meetings, is an essential witness, and has a prepaid vacation during the scheduled hearing. Student's attorney Savage agrees that a continuance is appropriate.

The parties ask that the mediation be set for December 10, 2021, and that the hearing be continued to February 1, 2, and 3, 2022. A hearing in February 2022 is more than six months after Student filed the initial complaint and is disfavored. The parties directly address this in their motion. They have diligently communicated and exchanged calendars, looking for mutually agreeable mediation and hearing continuance dates. The attorneys have listed their respective calendar commitments through January 2022. The parties have carefully considered the availability of key witnesses. For example, Dr. Nerheim is Orinda Union's representative at hearing, has prepaid out-of-country vacation plans, and is enrolled to attend a conference the second week of January 2022. Notably, Student is in a unilateral private school placement. Student agrees that delaying the hearing to February 2022 will not prejudice his educational program or the prosecution of his amended complaint. The parties have demonstrated good cause for a continuance of the hearing to the first week of February 2022.

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 will be held on December 10, 2021, 9:00 AM to 4:30 PM.

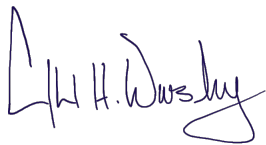
PREHEARING CONFERENCE will be held on January 24, 2022, at 1:00 PM.

DUE PROCESS HEARING will be held February 1, 2, and 3, 2022.

PARTICIPANT INFORMATION SHEETS FOR MEDIATION AND PREHEARING CONFERENCES MUST BE FILED TWO BUSINESS DAYS PRIOR TO THE DATE OF 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 timely filed.

IT IS SO ORDERED.

A handwritten signature in blue ink, appearing to read "Clifford H. Woosley". The signature is stylized with a large initial "C" and "W".

Clifford H. Woosley

Administrative Law Judge

Office of Administrative Hearings