

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

POWAY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021070814

ORDER GRANTING REQUEST FOR CONTINUANCE AND
SETTING VIDEOCONFERENCE MEDIATION, PREHEARING
CONFERENCE, AND DUE PROCESS HEARING

NOVEMBER 18, 2021

On July 26, 2021, Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, called OAH, naming Poway Unified School District. On September 2, 2021, OAH granted the parties' joint request to schedule a mediation and continue the due process hearing, and set the due process hearing to begin on December 7, 2021. On October 15, 2021, the parties participated in mediation but did not resolve the issues in the case.

On November 18, 2021, the parties filed a second joint request to schedule mediation and continue the due process hearing. The parties seek a three-month

continuance to allow time for Student to undergo independent educational evaluations, the parties to review the evaluations at an individualized education program team meeting, and for the parties to participate in a second mediation.

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 granted. The Individuals with Disabilities Education Act and OAH encourage settlement of issues without the need for a due process hearing. The parties represented that Student undergoing independent educational

evaluations, holding an individualized education program team meeting, and participating in a second mediation will further resolution of the case. Therefore, there is good cause to continue the due process hearing. However, because this case will have been pending for more than seven months at the time of the hearing, OAH will grant no further continuances without the parties showing extraordinarily good cause.

Accordingly, all dates are vacated. This case will be set as follows:

Mediation will be held on January 28, 2022, 9:00 AM to 4:30 PM. The mediation will be held via videoconference or telephone.

Prehearing Conference will be held on February 25, 2022, at 1:00 PM. The parties requested date of February 28, 2022 is not available.

Due Process Hearing will be held on March 8, through 10, 2022. The hearing will begin at 9:30 AM on all days, and generally end at 3:30 PM, unless otherwise ordered. The hearing will continue day to day, as needed, at the discretion of the Administrative Law Judge.

The parties must immediately notify all potential witnesses of the hearing dates, and must subpoena witnesses, if necessary, to ensure their availability to testify. Good cause for witness unavailability is not established by failing to properly notify or subpoena a witness.

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

IT IS SO ORDERED.

Tara Doss

Tara Doss

Administrative Law Judge

Office of Administrative Hearings