

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

PLEASANTON UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021080878

ORDER GRANTING REQUEST FOR CONTINUANCE AND
SETTING MEDIATION AND DUE PROCESS HEARING

NOVEMBER 22, 2021

On November 19, 2021, the parties filed with the Office of Administrative Hearings, referred to as OAH, a joint request to continue this matter, based upon a significant change in circumstances.

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. Here, since the second amended complaint was filed October 26, 2021, Student's individualized education program, or IEP, placed Student in a nonpublic school, the 30-day review IEP team meeting will be held on a day currently scheduled for hearing, and Parents are contemplating a move closer to the nonpublic school. At the first mediation on November 16, 2021, the parties agreed that a resolution short of hearing was likely, but depended upon whether the new placement was successful, and whether the family relocated. The parties seek a continuance for new mediation and hearing dates of approximately 45 days. In a similar request filed in the sibling's case, Parent's sworn declaration explains that she cannot attend a hearing in late December 2021 when her twin children, with significant autism, will be home under her care.

The request for continuance is granted. All dates are vacated. The parties have established good cause by a significant, unanticipated change in the status of the case

as a result of which the case is not ready for hearing. The parties have stipulated to the continuance, the additional time sought is not excessive, and the interests of justice are served by allowing the parties a brief period to determine if the proposed placement meets the needs of the student.

Mediation will be held on January 11, 2021, from 9:00 AM to 4:30 PM. The mediation will be by videoconference.

Prehearing Conference will be held on January 21, 2021, at 1:00 PM.

Due Process Hearing will be held on February 1, 2022 through February 3, 2022. 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.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall 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 why it was not possible to file the motion by that date.

IT IS SO ORDERED.

Alexa Hohensee

Alexa Hohensee

Administrative Law Judge

Office of Administrative Hearings