

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

CHULA VISTA ELEMENTARY SCHOOL DISTRICT.

OAH CASE NUMBER 2021090721

ORDER FOLLOWING PREHEARING CONFERENCE
GRANTING REQUEST FOR CONTINUANCE

NOVEMBER 8, 2021

On November 8, 2021, Administrative Law Judge Alexa Hohensee, Office of Administrative Hearings, held a telephonic prehearing conference. The Administrative Law Judge will be referred to as an ALJ. The prehearing conference will be referred to as a PHC. Sheila Bayne/Constance Zarkowski, Attorney at Law, appeared on behalf of Student. Pamela Townsend, Attorney at Law, appeared on behalf of Chula Vista Elementary School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

Chula Vista moved to continue the prehearing conference and due process hearing based on the unavailability of a key witness and its counsel's unavailability due to another pending due process hearing.

The motion was timely filed three days prior to the prehearing conference. The motion was opposed on the grounds that a continuance was prejudicial to Student.

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).)

The request for continuance is granted for good cause. Student's teacher for the 2019-2020 school year is unavailable due to a severe illness and is the key witness for Student's claims involving the period from March 2020 through the end of the 2019-2020 school year. There is not a firm date for return to employment for this key witness, and a continuance of 60 days is a reasonable time for Chula Vista to determine if and when the teacher will return. This time also gives both parties time to explore alternative means of establishing Student's educational needs during the 2019-2020 school year and the components of the virtual program from March 2020 through the end of the 2019-2020 school year in the event of the teacher's continued unavailability. Chula Vista is ordered to keep Student's counsel informed of the teacher's expected return date.

There is no prejudice to Student for three reasons. First, Student also needs the teacher to prove up Student's case. Second, the continuance is relatively short. And third, Student matriculated from Chula Vista's elementary school district over one year ago, in June 2020, and Student will not be denied a free appropriate public education by the continuance.

All previously scheduled dates are vacated. The case shall proceed as follows:

Prehearing Conference: January 10, 2022 at 1:00 PM

All other prehearing matters shall be addressed at the January 10, 2022 prehearing conference. All prehearing motions must be filed three business days before the PHC.

Due Process Hearing: January 19, 2022 through January 20, 2022.

The hearing shall begin at 9:30 AM on the first day of the hearing and on all other days, unless otherwise ordered. The hearing shall continue day to day at the discretion of the ALJ.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed.

SETTLEMENT

The parties shall immediately inform OAH in writing if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. If the parties reach a settlement within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

If a full and final written settlement agreement is reached after 4:00 PM the day before the hearing, the parties shall leave a voicemail message regarding the settlement at (916) 274-6035. The parties should also leave contact information such as cellular phone numbers of each party or counsel for each party. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH at <https://www.applications.dgs.ca.gov/oah/oahsftweb>.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

FAILURE TO COMPLY

Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

Alexa Hohensee

Alexa Hohensee

Administrative Law Judge

Office of Administrative Hearings