

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

PALM SPRINGS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021090890

ORDER GRANTING REQUEST FOR CONTINUANCE OF
DUE PROCESS HEARING

NOVEMBER 9, 2021

On September 28, 2021, Parents on behalf of Student filed a due process hearing request with the Office of Administrative Hearings naming Palm Springs Unified School District, referred to as Palm Springs. The Office of Administrative Hearings is referred to as OAH.

On November 3, 2021, Palm Springs filed a Motion to Continue Due Process Hearing dates on the basis the parties have not participated in a resolution session or mediation, despite reasonable efforts by Palm Springs having been made and documented or agreed in writing to waive the resolution meeting. Parents on behalf of Student filed an opposition to the motion to continue on November 9, 2021.

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).)

A school district is required within 15 days of receiving notice of a parent's due process complaint, and prior to the initiation of a due process hearing, to convene a meeting with the parent and the relevant members of the student's individualized education program team to discuss the due process complaint, and the facts forming the basis of the complaint, for the purpose of attempting to resolve the dispute. (34 C.F.R. § 300.510, subd. (a)(1).) The resolution meeting need not be held if the parent and the school district agree in writing to waive the meeting or to participate in mediation. (*Id.* at § 300.510, subd. (a)(3).) The failure of the parent to participate in the resolution

meeting will delay the timelines for the resolution process and the due process hearing until the meeting is held, and may result in dismissal of the due process complaint if the school district is unable to obtain parent's participation in the resolution meeting after reasonable efforts have been made and documented. (*Id.* at § 300.510, subd. (a)(4).)

Palm Springs' motion to continue is supported by a sworn declaration of counsel and correspondence to Parents dated October 5, 2021 and October 22, 2021 proposing dates for a resolution session and requesting Parents to return a form indicating their intent to attend the resolution session. The correspondence advised Parents that upon confirmation of their availability, they would be sent a link to the electronic meeting. No written response was received from Parents.

The motion is further supported by email correspondence from Palm Springs' counsel to Student's counsel dated October 28, 2021 and November 1, 2021 explaining the need for Parents to participate in a resolution session. Following Palm Springs' November 1, 2021 communication with Student's counsel's office, that same day Parents contacted Palm Springs and proposed dates to hold the resolution session. The parties agreed to schedule the resolution session for November 8, 2021, subsequent to the filing of Palm Springs' motion to continue.

Student's opposition motion does not dispute the above facts but contends that on October 28, 2021, the day of the second proposed resolution session, counsel for Student attempted to call Palm Springs' superintendent to participate in the resolution session. Student does not dispute, however, that no written response was provided by Parents to Palm Springs confirming their availability for either of the proposed resolution sessions as instructed in the October 5, 2021 and October 22, 2021 correspondence, or that counsel or Parents notified Palm Springs prior to October 28, 2021 of their availability to participate in the resolution meeting that day.

Palm Springs contends Student's delay in participating in the resolution session has prevented it from preparing for the prehearing videoconference scheduled for November 15, 2021, and due process hearing scheduled for November 23 and 24, 2021. Palm Springs requests a short continuance to allow it time to work with Parents in an effort to resolve this matter before incurring the time and expense of preparing for and participating in a due process hearing. No prior continuances have been granted in this matter, and Student's counsel provides no reason why a short continuance of this matter is not warranted. Accordingly, Palm Springs' motion to continue is granted for good cause. All previously scheduled dates are vacated. The case shall proceed as follows:

PREHEARING VIDEOCONFERENCE: December 6, 2021, at 3:00 pm.

DUE PROCESS HEARING BY VIDEOCONFERENCE: December 14, 15 and 16, 2021.

The hearing shall begin at 9:30 am each day and generally end at 3:30 pm, unless otherwise ordered. The hearing shall continue day to day, as needed, at the discretion of the ALJ. Prehearing videoconference statements and motions are due to OAH no later than three business days before the prehearing videoconference or with a showing of good cause why it was not timely filed.

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

The parties shall immediately notify all potential witnesses of the hearing dates and shall subpoena witnesses, if necessary, to ensure that the witnesses will appear to testify. A party's failure to notify or subpoena a witness to testify will not be considered good cause to continue the hearing.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings