

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
LAKEPORT UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2021100175

ORDER GRANTING REQUEST FOR CONTINUANCE

NOVEMBER 2, 2021

On November 2, 2021, Administrative Law Judge Rommel P. Cruz, held a due process hearing in this matter. Attorney Jennifer Nix represented Lakeport Unified School District. Director of Special Education Nicole Wells appeared on behalf of Lakeport Unified. Parents represented Student and were assisted by a Spanish language interpreter.

At the hearing, Parents requested a continuance of the hearing to allow them additional time to obtain an attorney and to further prepare for hearing. Parent represented for the first time that Parents rely on a cellphone to access emails, but do not own a computer, laptop, or printer to access and review documents sent via email. Therefore, Parents stated they were unaware and unprepared for hearing. Lakeport Unified objected to a continuance, and argued that Parents have had ample time to

obtain the assistance of an attorney. Lakeport Unified and Parents were engaged in a prior due process hearing matter in OAH case no. 2021070721, over Summer of 2021 in which Parents were given resources for attorneys. Furthermore, Lakeport Unified served Parents a copy of the due process hearing request in both the English and Spanish languages by certified mail on October 5, 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).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is granted to allow Parents additional time to prepare

for hearing. This is the first continuance in this matter. The hearing dates of November 3 and 4, 2021, are vacated. This matter will be set as follows:

Due Process Hearing is continued to November 9, 10, and 12, 2021. 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.

Lakeport Unified shall provide Parents a copy of Lakeport Unified's exhibits no later than 12:00 PM on November 5, 2021. Lakeport Unified shall inform Parents when the copy of exhibits is available for Parents to pick up. Parents shall bring the copy of exhibits with them each day when joining the videoconference hearing from Lakeport Unified's offices.

OAH will provide Parents with a copy of Lakeport Unified's due process hearing request and OAH's Orders in this matter translated into the Spanish language by mail to their home address. All further service to Parents and Student shall be by mail to Parents' home address and not through the OAH Secure e-file Transfer System.

IT IS SO ORDERED.

Rommel P. Cruz

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings