

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021080430

ORDER GRANTING REQUEST FOR SECOND MEDIATION
AND CONTINUANCE OF HEARING AND SETTING SECOND
MEDIATION, PREHEARING CONFERENCE AND HEARING

DECEMBER 09, 2021

On December 8, 2021, the parties filed a joint request for a second mediation and continuance of the hearing with the Office of Administrative Hearings, referred to as OAH. That request was based upon the parties' desire to hold a second mediation because some, but not all, issues were resolved at the first mediation on December 3, 2021. The parties believe they may be able to settle this case entirely at a second mediation. The parties' request was further based upon their desire to hold a second mediation after a pending independent education evaluation, called an IEE, is completed, and after an individualized education program, called an IEP, meeting

scheduled for December 14, and 15, 2021, is held. The parties also represented in their request that the results of the IEP meeting scheduled for mid-December 2021, may influence the terms of a potential settlement agreement.

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. All dates are vacated. The continuance request is granted because the parties' desire to hold a second mediation after a pending IEE is completed and after a

scheduled IEP meeting is held in order to resolve outstanding issues in dispute, constitutes good cause. However, because this case has been pending since August 13, 2021, a further continuance of the hearing will not be granted, unless extraordinary circumstances make another continuance necessary.

This matter will be set as follows:

Mediation will be held on January 6, 2022, at 9:00 AM to 4:30 PM. The mediation will be held via videoconference, using the Microsoft Teams application.

Prehearing Conference will be held on January 31, 2022, at 1:00 PM.

Due Process Hearing will be held on February 8, 2022, through February 10, 2022. The hearing will be held via videoconference using the Microsoft Teams application, and shall begin at 9:30 AM on all days, and end around 3:30 PM 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.

Christine Arden

Christine Arden

Administrative Law Judge

Office of Administrative Hearings