

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,

v.

ROWLAND UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021110368

ORDER GRANTING REQUEST FOR CONTINUANCE AND
SETTING PREHEARING CONFERENCE AND DUE PROCESS
HEARING

DECEMBER 29, 2021

On November 15, 2021, Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, called OAH, naming Rowland Unified School District. On December 21, 2021, Rowland filed a Motion to Continue the due process hearing on the grounds that Rowland's attorney and special education representative are unavailable on the dates currently set for hearing. Student did not respond to Rowland's motion.

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. Rowland's attorney and special education representative declared, under the penalty of perjury, that they are scheduled to attend a conference during the dates set for hearing in this case. Rowland also provided documentary proof of the conference dates. Rowland seeks a short continuance to allow its attorney and representative to attend the conference. Unavailability of Rowland's attorney and representative is good cause to continue the hearing. Further, this is the first continuance request and Student did not file an opposition. Accordingly, all dates are vacated and the case will be set as follow:

Prehearing Conference will be held on January 14, 2022, at 10:00 AM.

Due Process Hearing will be held on January 25, through 27, 2022. The hearing will begin at 9:30 AM on all days, and generally end at 3:30 PM, unless otherwise ordered. The hearing will continue day to day, as needed, at the discretion of the Administrative Law Judge.

The parties must immediately notify all potential witnesses of the hearing dates, and must 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 for why it was not filed by that date.

IT IS SO ORDERED.

Tara Doss

Tara Doss

Administrative Law Judge

Office of Administrative Hearings