

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021090831

ORDER FOLLOWING PREHEARING CONFERENCE
GRANTING REQUEST FOR CONTINUANCE FOR
MEDIATION

JANUARY 14, 2022

On January 14, 2022, Administrative Law Judge Chris Butchko, Office of Administrative Hearings, held a telephonic prehearing conference. The prehearing conference will be referred to as a PHC. Lauren Fairbanks, Attorney at Law, appeared on behalf of Student. Anahid Hoonanian, Attorney at Law, appeared on behalf of Los Angeles Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION; CONTINUANCE

The parties jointly moved to continue the prehearing conference and due process hearing so that a mediation could be held. OAH had previously granted the parties' joint motion for a mediation by order dated November 9, 2021. The parties cancelled the mediation, informing OAH on January 4, 2022, that they had been awaiting completion of triennial assessments and the convening of an Individualized Education Plan team meeting to discuss Student's needs and services, and had planned to follow that meeting with settlement negotiations for this case. Those plans were disrupted when Student's counsel fell ill, and Student moved on January 4, 2022, for a continuance, which was granted by OAH on that date. However, the parties did not specify the length of continuance requested, so the matter was continued for one week.

At the PHC, the parties reported that they were actively discussing settlement and wished to have a mediation. The parties proposed that the mediation take place on January 25, 2022, and that the hearing be continued to a following date.

The motion was not filed three days before the PHC, being raised at the PHC. Student established good cause for the failure to move before the PHC as she had only begun to resume working days before the PHC. Los Angeles joined in the motion for mediation and brief continuance.

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 requested continuance is brief and is not more than would have been granted had the parties requested it on January 4, 2022. The motion is made jointly and is based upon counsel's unavailability. Mediation is a favored means for resolving due process cases and the parties have satisfactorily explained the decision to cancel the prior scheduled mediation. Accordingly, the request for continuance for mediation is granted for good cause. All previously scheduled dates are vacated. The case shall proceed as follows:

Mediation: Tuesday, January 25, 2022, at 1:30 PM.

Mediation will be held virtually, by Microsoft Teams or telephonically.

The prehearing conference will resume on January 31, 2022, at 3:00 PM.

All other prehearing matters shall be addressed at the January 31, 2022 prehearing conference. All prehearing motions must be filed three business days before the PHC.

Due Process Hearing: February 8 through 10, 2022.

The hearing shall begin at 9:30 AM on the first day of the hearing and at 9:00 AM on all other days, unless otherwise ordered. The hearing shall continue day to day at the discretion of the ALJ.

OAH is authorized to conduct due process hearings by videoconference or telephone. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) Based on state and federal guidance to address safety procedures due to the novel coronavirus, COVID-19, OAH will conduct the due process hearing by videoconference using the Microsoft Teams application. Unless otherwise ordered, participants are required to appear by videoconference using a webcam and Microsoft Teams.

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 5:00 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.

Chris Butchko

Chris Butchko

Administrative Law Judge

Office of Administrative Hearings