

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,

v.

ANTIOCH UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021120052

ORDER FOLLOWING PREHEARING CONFERENCE
GRANTING REQUEST TO SCHEDULE MEDIATION AND
CONTINUE DUE PROCESS HEARING

JANUARY 14, 2022

On January 14, 2022, Administrative Law Judge Jennifer Kelly, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Brett S. Allen, Attorney at Law, appeared on behalf of Student. Anisa Z. Pillai, Attorney at Law, appeared on behalf of Antioch Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

On January 13, 2022, the parties filed a motion to schedule mediation and continue the due process hearing. Although the motion was not filed three business days before the PHC, the parties established good cause why the motion was not timely filed.

OAH issued an Order Granting Request for Videoconference Mediation on December 23, 2021. Mediation was scheduled for January 7, 2022. Parent was unable to participate in mediation due to illness.

On January 11, 2022, the parties filed a Joint Request to Continue Hearing Dates. OAH issued an Order Denying Request for Continuance on January 11, 2022 because the parties' Request to Continue Hearing Dates did provide a basis for the request.

The parties renewed their request to reschedule mediation and continue the due process hearing in their January 13, 2022 motion and at the PHC. The parties desire to attempt to resolve this dispute through mediation without the necessity of a due process hearing. The parties were unable to participate in a resolution session or mediation due to Parent's illness. No prior continuances have been granted in this matter.

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).)

Good cause exists to continue this matter. Accordingly, the parties' joint request for a continuance is granted for good cause. All previously scheduled dates are vacated. The case shall proceed as follows:

MEDIATION DATE is January 31, 2022, 9:00 am to 4:30 pm.

MEDIATION will occur via telephone or video.

PREHEARING VIDEOCONFERENCE will be held on March 7, 2022, at 1:00 pm.

DUE PROCESS HEARING will be held on March 15, 16 and 17, 2022.

The hearing shall begin at 9:30 am all days unless otherwise ordered. The hearing shall continue day to day, as needed at the discretion of the Administrative Law Judge. 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.

SETTLEMENT

The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached 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. 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>.

If a full and final written settlement agreement is reached after 4:00 PM the day prior to 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.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed 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.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings