

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

ROCKLIN UNIFIED SCHOOL DISTRICT AND
ELK GROVE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021120714

ORDER FOLLOWING PREHEARING CONFERENCE
GRANTING REQUEST FOR CONTINUANCE

JANUARY 31, 2022

On January 31, 2022, Administrative Law Judge Cararea Lucier, Office of Administrative Hearings held a video prehearing conference. The Administrative Law Judge will be referred to as an ALJ. The prehearing conference will be referred to as a PHC. Sheila Bayne, Constance Zarkowski, and Robert Burgermeister, Attorneys at Law, appeared on behalf of Student. Tilman Heyer, Attorney at Law, appeared on behalf of Rocklin Unified School District, with support from Morgan Kimmey. Cathy Holmes, Attorney at Law, appeared on behalf of Elk Grove Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

Elk Grove moved to continue the prehearing conference and due process hearing because Elk Grove and Student have not participated in a mandatory resolution session as required by 34 Code of Federal Regulations part 300.510. Elk Grove is not waiving participation in the resolution session. Additionally, the parties have not participated in a mediation for this matter.

The motion was not filed three days before the PHC. Elk Grove established good cause for filing the motion less than three days before this PHC because, under the federal regulations, the hearing may not go forward unless a resolution session is convened, or the parties mutually agree to waive the resolution session. The parties have been actively discussing potential dates for a resolution session.

Student opposed Elk Grove's motion to continue on the basis that the motion was not filed three business days before the PHC and alleged that Elk Grove did not provide good cause for a continuance. Student's counsel confirmed that Student and Elk Grove have not participated in a resolution session, and asserted that Student is willing to participate in a resolution session, but she opposed a continuance of the hearing.

Rocklin did not oppose Elk Grove's motion to continue.

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 request for continuance is granted for good cause. All previously scheduled dates are vacated. The case shall proceed as follows:

Prehearing Conference: February 7, 2022, at 10:00 AM.

All other prehearing matters shall be addressed at the February 7, 2022, prehearing conference. All prehearing motions must be filed three business days before the PHC.

Due Process Hearing: February 15, 16, and 17, 2022.

The hearing shall begin at 9:30 AM on all days, and continue until 3:30 PM, unless otherwise ordered. The hearing shall continue day to day at the discretion of the ALJ. The hearing will occur via video using the Microsoft Teams application.

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.

Cararea Lucier

Cararea Lucier

Administrative Law Judge

Office of Administrative Hearings