

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:
PARENTS ON BEHALF OF STUDENT,

v.

ANAHEIM ELEMENTARY SCHOOL DISTRICT.

OAH CASE NUMBER 2021120868

OAH CASE NUMBER 2021100500

ORDER GRANTING REQUEST FOR VIDEOCONFERENCE
MEDIATION AND CONTINUANCE OF
DUE PROCESS HEARING

JANUARY 28, 2022

On October 19, 2021, Anaheim Elementary School District filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2021100500, Anaheim's case, naming Student. The Office of Administrative Hearings is referred to as OAH.

On December 28, 2021, Student filed a Request for Due Process Hearing in OAH Case number 2021120868, Student's case, naming Anaheim Elementary School District.

On December 28, 2021, Student filed a Motion to Consolidate the cases. Anaheim did not oppose the motion.

On December 29, 2021, OAH issued an Order Granting Motion to Consolidate and designated Student's case as the primary case.

On January 21, 2022, the parties filed a Joint Request to Schedule Mediation and Continue Hearing Dates. On January 24, 2022, OAH issued an Order Denying Request for Videoconference Mediation and Continuance of Due Process Hearing.

On January 27, 2022, Student filed a Motion to Continue on the basis the parties wish to mediate the consolidated dispute, no prior continuances have been granted in Student's case, and Student's counsel of record is unavailable for hearing on the currently scheduled hearing dates of February 15, 16 and 17, 2022, due to scheduling conflicts based on other due process hearings in earlier filed OAH cases. Anaheim filed a Statement of Non-Opposition to Motion to Continue on January 27, 2022 and requested the mediation and due process hearing dates be scheduled as previously requested in the parties' January 21, 2022 request.

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).)

Student's Request to Continue is supported by a sworn declaration by Student's attorney confirming he is scheduled for due process hearings in an earlier filed matters pending before OAH on the same dates as the hearing set in this matter. In the event of a scheduling conflict, OAH's policy is to hear earlier filed cases first. While OAH previously continued this matter when it granted the continuance request in Anaheim's case, good cause exists because of the scheduling conflicts and the parties wish to mediate this consolidated dispute in an effort to resolve this matter without the necessity of a due process hearing.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is granted for good cause. All dates are vacated. This matter will be set as follows:

MEDIATION DATE is March 21, 2022, 9:00 am to 4:30 pm.

MEDIATION will occur via telephone or video.

PREHEARING VIDEOCONFERENCE will be held on April 29, 2022, at 1:00 pm.

DUE PROCESS HEARING will be held on May 10, 11, and 12, 2022.

The hearing shall begin at 9:30 am on all days unless otherwise ordered. The hearing shall continue day to day, as needed, at the discretion of the Administrative Law Judge. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference or with a showing of good cause why it was not timely filed.

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.

ANY CHANGE TO THE PARTICIPANTS' EMAIL ADDRESSES PROVIDED BY THE PARTIES IN THEIR REQUEST MUST BE FILED TWO BUSINESS DAYS BEFORE THE SCHEDULED EVENT.

IT IS SO ORDERED

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings