

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN MARCOS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021070879

ORDER FOLLOWING PREHEARING CONFERENCE AND
GRANTING CONTINUANCE OF DUE PROCESS HEARING

FEBRUARY 14, 2022

On February 14, 2022, Administrative Law Judge Alexa Hohensee, 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.

Attorney Margaret Adams appeared on behalf of Student. Attorney Madisyn Ukrainetz appeared on behalf of San Marcos 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 February 9, 2022, Student filed a motion to continue the due process hearing based on the unavailability of Parents to attend the hearing on the dates scheduled due to medical reasons. Student requested the hearing be continued for approximately one week to a date on or after March 3, 2022. The motion was timely filed three business days prior to the prehearing conference.

On February 14, 2022, San Marcos filed opposition, arguing that OAH had said no further continuances would be granted. San Marcos also has a conflict with a later-filed case on March 22, 2022 through March 24, 2022.

For background, Student filed an amended complaint pursuant to Order dated January 6, 2022. On that same date, OAH issued a scheduling order with the currently scheduled hearing dates. The current dates fall on dates Parents are unavailable due to prescheduled medical procedures.

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. Parents, who are both Student's representatives and essential witnesses, are unavailable due to excusable circumstances. The continuance sought is very short, and requested after the amendment of the complaint. All previously scheduled dates are vacated. The case will proceed as follows:

Prehearing Conference: March 18, 2022, at 3:00 PM.

All other prehearing matters will be addressed at the March 18, 2022 PHC. All prehearing motions must be filed three business days before the PHC.

Due Process Hearing: March 29, 2022 through March 30, 2022.

The hearing will begin at 9:30 AM on all days, unless otherwise ordered. The hearing will continue day to day at the discretion of the ALJ.

The parties must immediately notify all potential witnesses of the hearing dates, and must 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 must 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 must 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 must 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 must 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.

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the prehearing conference. Any discussion and conversation not referenced in this Order is not binding on the ALJ conducting the hearing and may not be relied upon by the parties. The parties should be aware that, at hearing, the ALJ conducting the hearing has discretion to reconsider any part of this Order.

IT IS SO ORDERED.

Alexa Hohensee

Alexa Hohensee

Administrative Law Judge

Office of Administrative Hearings