

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

CUPERTINO UNION SCHOOL DISTRICT AND
CAMPBELL UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2021100707

ORDER GRANTING REQUEST FOR CONTINUANCE

FEBRUARY 1, 2022

On October 22, 2021, Student filed with the Office of Administrative Hearings, referred to as OAH, a request for a Due Process Hearing naming Cupertino Union School District and Campbell Union High School District. On December 20, 2021, OAH granted the parties' joint request to continue this matter. On January 21, 2022, Cupertino notified OAH that Student and Cupertino had reached a settlement agreement pending board approval, but to date neither party has informed OAH when the agreement will be going before the Board for approval. On January 24, 2022, Student and Campbell participated in mediation. On January 31, 2022, Student and Campbell filed a joint request for a second 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).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is granted. Student and Campbell established good cause for a second continuance as the parties made progress at mediation but need additional time and a second mediation to resolve this matter. All dates are vacated. This matter will be set as follows:

MEDIATION DATE REQUEST is denied as no available mediation slots. Parties are reminded to include a second available date in their requests, especially when requesting a Monday or Friday mediation when available slots are more limited.

PREHEARING CONFERENCE will be held on March 11, 2022, at 1:00 PM.

DUE PROCESS HEARING will be held on March 22, 2022, through March 24, 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.

IT IS SO ORDERED.

Linda Johnson

Linda Johnson

Administrative Law Judge

Office of Administrative Hearings