

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

GARVEY SCHOOL DISTRICT.

OAH CASE NUMBER 2021090761

ORDER GRANTING THIRD REQUEST FOR
VIDEOCONFERENCE MEDIATION AND CONTINUANCE OF

DUE PROCESS HEARING

MARCH 29, 2022

On September 22, 2021, Student filed a request for due process hearing. The Office of Administrative Hearings, known as OAH, granted the parties joint request for a mediation and continuance of due process hearing on November 1, 2021. OAH held the first mediation on January 7, 2022. OAH granted the parties joint request for a second mediation and continuance of the due process hearing on February 1, 2022. However, the assessments underlying the settlement were not completed in time for the second mediation, scheduled for March 28, 2022. The parties cancelled that mediation. On March 29, 2022, the parties filed a joint request to reschedule that mediation and to

continue the due process hearing for one month to allow sufficient time to complete the assessments which are the subject of the underlying dispute.

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 Education Code strongly favors dispute resolution. The procedural safeguards promote the parties using mediation conferences and resolving their dispute in an informal, non-adversarial way, even if a due process complaint has been filed, and even if the hearing has commenced. (Ed. Code, § 56503.)

The request for continuance is granted for good cause. Good cause exists because the assessments will be finalized in two weeks, parties represented the information from the assessments will help resolve significant issues without a due process hearing, will serve judicial economy, and the interests of justice. Therefore, a continuance of the hearing is warranted. However, there shall be no further continuances permitted, regardless of the status of the assessments. All previously scheduled dates are vacated. This matter will be set as follows:

MEDIATION will be held on April 25, 2022, from 1:30 to 5:00 PM.

The mediation will be held via videoconference or telephone.

PREHEARING CONFERENCE will be held on May 9, 2022, at 10:00 AM.

DUE PROCESS HEARING will be held on May 17 through 19, 2022.

PARTICIPANT INFORMATION SHEETS FOR MEDIATION AND PREHEARING CONFERENCES MUST BE FILED TWO BUSINESS DAYS PRIOR TO THE DATE OF THE SCHEDULED EVENT.

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.

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 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

Deborah Myers Cregar

Deborah Myers-Cregar
Administrative Law Judge
Office of Administrative Hearings