

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

V.

NORTHERN HUMBOLDT UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2021110695

ORDER FOLLOWING PREHEARING CONFERENCE AND
GRANTING REQUEST FOR CONTINUANCE AND SETTING
SECOND MEDIATION, PREHEARING CONFERENCE AND
DUE PROCESS HEARING

MARCH 14, 2022

On March 14, 2022, Administrative Law Judge Laurie Gorsline, 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.

Richard Ruderman and Julia Baker, Attorneys at Law, appeared on behalf of Student. Carl Corbin, Attorney at Law, appeared on behalf Northern Humboldt Union

High School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

DUE PROCESS HEARING AND REQUEST FOR CONTINUANCE

On March 14, 2022, North Humboldt Union High School District filed a motion to continue the hearing presently scheduled for March 22 through 24, 2022, to April 5, 2022. The motion was supported by a declaration from attorney Jennifer Nix establishing that she has been extremely ill and diagnosed with an illness on March 14, 2022 that renders her unable to prepare for and participate in the currently scheduled hearing.

At the PHC, North Humboldt stated that there were no other attorneys available to handle the currently scheduled hearing. Student opposed the request for continuance, and stated that if there was a continuance, counsel was not available for hearing on April 5, 2022 because he was scheduled to be out of the country beginning on April 6 through April 18, 2022. North Humboldt represented that Attorney Nix is out of the country from April 18 through 22, 2022. Counsel for the parties met and conferred and agreed if there was a continuance, they were agreeable to a hearing date of May 3, 2022, and a PHC on April 25, 2022 at 9:00 AM. At the PHC, the parties also requested a second mediation date on March 24, 2022 at 9:00 AM based on their ongoing attempts to settle this matter and Student's desire to get Student back in school as soon as possible.

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 for continuance is granted. The parties have established good cause for the requested continuance based on North Humboldt counsel's illness, the complexity of the case and the unavailability of other counsel to conduct the hearing, and current counsels' respective unavailability due to being out of the country until April 22, 2022. However, because this case has been pending since November 23, 2021, OAH does not anticipate granting any other continuances absent a showing by declaration under penalty of perjury of extraordinary good cause. The parties request for a second mediation is also granted based on the discussion at the PHC. The matter is set as follows:

MEDIATION DATE is March 24, 2022, 9:00 AM to 4:30 PM.

MEDIATION will occur via telephone or video.

PREHEARING CONFERENCE will be held on April 25, 2022, at 1:00 PM.

DUE PROCESS HEARING will be held on May 3 through 5, 2022.

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

ANY CHANGES TO THE PARTICIPANTS' EMAIL ADDRESSES PROVIDED BY THE PARTIES IN THEIR REQUEST MUST BE FILED TWO BUSINESS DAYS BEFORE 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 PHC or with a showing of good cause why it was not timely filed.

MOTIONS

Northern Humboldt filed its response to Student's complaint on January 20, 2022. On March 9, 2022, Student filed a Motion to Compel a Meaningful Response to Student's Amended Complaint. The parties argued the motion during the PHC. North Humboldt was ordered to file its opposition by close of business on March 14, 2022. However, in light of counsel's illness and continuance of the hearing, North Humboldt

shall have until March 16, 2022 at 5:00 PM to file any opposition to the motion. The motion will be addressed by separate order.

During the PHC, Student requested clarification as to whether the period of time after the filing of the complaint would be considered at hearing for the admission of evidence and continuing violations by North Humboldt. Student's request lacked specificity and appeared to be premature. The ALJ declined to make any specific ruling regarding Student's oral request and ordered Student to put any request in writing in the form of a motion, detailing exactly what Student was seeking.

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 and processed 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

The 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.

Laurie Gorsline

Laurie Gorsline

Administrative Law Judge

Office of Administrative Hearings