

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ALAMEDA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021120065

ORDER GRANTING REQUEST FOR CONTINUANCE AND
SETTING PREHEARING CONFERENCE AND DUE PROCESS
HEARING

MARCH 25, 2022

On February 24, 2022, the Office of Administrative Hearings, referred to as OAH, granted Student's motion to amend the due process complaint. On March 22, 2022, OAH denied Student's request to continue this matter, based upon the failure to meet and confer for mutually agreeable dates. OAH ordered the parties to meet and confer and submit a new continuance request by March 25, 2022. On March 24, 2022, the parties submitted a joint request for continuance of the due process hearing and provided mutually convenient proposed dates. The parties did not agree to a mediation.

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 parents represented they are unavailable for the current hearing due to a pre-paid vacation. Student's co-counsel represented she has a conflict with a District Court appearance on the first day of hearing. Counsel for Alameda Unified School District represented he was unavailable during the first week of hearing. Additionally, Alameda Unified School District witnesses will be unavailable during the first week of hearing due to its scheduled spring break. Parties do not wish to a mediation at this time.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

Granted. All dates are vacated. This matter will be set as follows:

PREHEARING CONFERENCE will be held on May 6, 2022, at 1 PM.

DUE PROCESS HEARING will be held on May 17 through 19, 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. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference or with evidence of good cause why it was not possible to file the motion by that date.

IT IS SO ORDERED.

Deborah Myers Cregar

Deborah Myers-Cregar

Administrative Law Judge

Office of Administrative Hearings