

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

LOMPOC UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022020107

ORDER FOLLOWING PREHEARING CONFERENCE,
GRANTING REQUEST FOR CONTINUANCE, AND SETTING
MEDIATION, PREHEARING CONFERENCE AND HEARING
BY VIDEOCONFERENCE

MARCH 14, 2022

On March 14, 2022, Administrative Law Judge Christine Arden, Office of Administrative Hearings held a videoconference prehearing conference. The Administrative Law Judge will be referred to as an ALJ. The Office of Administrative Hearings will be referred to as OAH. The prehearing conference will be referred to as a PHC.

Daniel Shaw, Attorney at Law, appeared on behalf of Student. Jennifer Choi, Attorney at Law, appeared on behalf of Lompoc Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

REQUEST FOR MEDIATION AND CONTINUANCE OF PHC AND HEARING

The parties jointly moved to continue the prehearing conference and due process hearing based on their desire to review the results of independent educational evaluations, called IEEs, of Student, and participate in a mediation. There were no previous requests for a mediation or continuance filed in this case.

The motion for mediation and to continue the hearing was not filed three days before the PHC. On March 11, 2022, less than three business days before the March 14, 2022 PHC, the parties entered into an interim settlement agreement which provided for Lompoc Unified School District to fund IEEs of Student. Since the parties entered into the interim agreement only 1 business day before the PHC, they established good cause for filing their joint motion less than three days before the PHC.

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 parties' last-minute interim agreement prior to the PHC regarding funding of IEEs of Student constitutes good cause to grant the parties' initial request for a mediation and continuance of the PHC and due process hearing. All previously scheduled dates are vacated. The case shall proceed as follows:

Mediation will take place on May 18, 2022, from 9:00 AM to 4:30 PM. The mediation shall be conducted by videoconference using the Microsoft Teams application. Parties must file Participant Information Sheets at least two business day prior to the mediation.

Prehearing Conference will take place on May 27, 2022, at 1:00 PM, by videoconference, using the Microsoft Teams application. All other prehearing matters shall be addressed at the May 27, 2022 PHC. All prehearing motions must be filed at least three business days before the PHC. Parties must file Participant Information Sheets for the PHC and the Due Process Hearing at least two business day prior to the PHC.

Due Process Hearing will take place on June 7, 2022, through June 9, 2022. The hearing shall begin at 9:30 AM each day and end about 3:00 PM, unless otherwise

ordered. The hearing shall continue day to day at the discretion of the ALJ. The due process hearing shall be conducted by videoconference using the Microsoft Teams application.

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

IT IS SO ORDERED.

Christine Arden

Christine Arden

Administrative Law Judge

Office of Administrative Hearings