

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022020548

ORDER FOLLOWING PREHEARING CONFERENCE
CONTINUING PREHEARING CONFERENCE AND DUE
PROCESS HEARING

MARCH 28, 2022

On March 28, 2022, Administrative Law Judge Robert G. Martin, Office of Administrative Hearings held a telephonic prehearing conference. The Administrative Law Judge will be referred to as an ALJ. The prehearing conference will be referred to as a PHC. Sheila Bayne, Attorney at Law, appeared on behalf of Student. Elizabeth Schwartz and Lenore Silverman, Attorneys at Law, appeared on behalf of Oakland Unified School District, referred to as Oakland. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

CONTINUANCE OF PREHEARING CONFERENCE AND HEARING

Student filed his due process hearing request on February 16, 2022. The matter was set for hearing on April 5 through 7, 2022, and has not previously been continued.

On March 23, 2022, Oakland filed a timely motion to continue the prehearing conference and due process hearing based on the unavailability of six potential witnesses due to planned vacations during Oakland's spring break April 4 through 8, 2022. The witnesses in question submitted declarations under penalty of perjury attesting to their unavailability. Student's preliminary witness list included in Student's prehearing conference statement included all six of the witnesses. Oakland's counsel submitted a declaration that counsel had emailed Student's counsel on March 17, 2022 requesting the parties mediate the matter and continue the hearing, but did not receive a response.

At the PHC, the parties indicated they had reached a tentative agreement for a settlement of the matter subject to approval of Oakland's board. Student did not object to a short continuance of the matter.

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 request for continuance is granted for good cause based on the unavailability of Oakland's witnesses. All previously scheduled dates are vacated. The case shall proceed as follows:

PREHEARING CONFERENCE will be held on April 8, 2022 at 1:00 PM.

DUE PROCESS HEARING will be held on April 19 through 21, 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.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Robert G. Martin", with a stylized flourish at the end.

Robert G. Martin

Administrative Law Judge

Office of Administrative Hearings