

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
BAY AREA TECHNOLOGY SCHOOL,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NUMBER 2022020842

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

MARCH 10, 2022

On March 10, 2022, Bay Area Technology School filed with the Office of Administrative Hearings, referred to as OAH, a request to continue this matter, based upon unavailability of counsel for Bay Area Technology on the currently scheduled hearing dates. OAH did not receive a response from Student, however, Student's request for a continuance of the hearing was denied by OAH without prejudice on March 9, 2022, as Student's request did not include proposed hearing dates.

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 is granted due to the unavailability of counsel for Bay Area Technology on the dates currently scheduled for hearing. Counsel is scheduled to appear on two earlier-filed cases set to begin on same dates as this matter. This is the first continuance in this matter. All dates are vacated. This matter will be set as follows:

Prehearing Conference will be held on April 8, 2022, at 1:00 PM. The prehearing conference shall occur by videoconference.

Due Process Hearing will be held on April 19, 20 and 21, 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.

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.

The parties may request new dates for hearing to allow the parties to participate in mediation or to accommodate the schedule of Student's counsel should Student retain one.

IT IS SO ORDERED.

Rommel P. Cruz

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings