

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

STOCKTON UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023100438

ORDER GRANTING REQUEST FOR CONTINUANCE

AND SECOND MEDIATION

JANUARY 17, 2024

On October 13, 2023, Student filed a request for due process with the Office of Administrative Hearings, called OAH, naming Stockton Unified School District. On November 7, 2023, OAH granted the parties' joint request for mediation and continuance of the due process hearing. The parties participated in in mediation on December 8, 2023.

On January 17, 2024, the parties filed a joint request for a second mediation and continuance of the due process hearing currently scheduled on February 8, 2024. The parties believe that participating in a second mediation would be fruitful in resolving this matter and request a continuance of the hearing to accommodate the second

mediation, to engage in settlement discussions, and to prepare for hearing if the matter cannot be resolved. The parties claim that after participating in the first mediation, they still have not resolved the issue of Student's placement. They assert that before the second mediation, Stockton agreed to provide Parents with a chaperoned tour of two placements. Additionally, days prior to the first mediation, Parent consented to a complete re-evaluation of Student. The parties contend that prior to the second mediation they will have more information essential to resolving the matter based on the assessments and tour of the placements. The parties also request for the same mediator to be assigned to the second mediation.

OAH must conduct a due process hearing and issue a decision within 45 days of receiving the due process complaint, unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Resolving the due process hearing quickly is legally required. Hearings may only be continued if "good cause" is established. (Ed. Code, § 56505, subd. (f)(3).) OAH is guided by the Administrative Procedure Act and the California Rules of Court when ruling on continuance motions. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.)

Good cause to continue a hearing may include:

- An essential lay or expert witness is unavailable because of death, illness, or other excusable circumstances;
- A party is unavailable because of death, illness, or other excusable circumstances;
- A party's attorney is unavailable because of death, illness, or other excusable circumstances;
- A new attorney substitutes in, but only if the party establishes that the substitution is required in the interests of justice;

- A new party is added, and the new party has not had a reasonable opportunity to prepare for trial, or other parties have not had a reasonable opportunity to prepare for trial regarding the new party's involvement;
- A party is unable to obtain essential testimony, documents, or other material evidence despite diligent efforts; or
- The case has a significant and unexpected change which makes the case not ready for trial.

Generally, continuances are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

The parties established good cause convene a second mediation. Because assessments were authorized before the first mediation and will be completed before the second mediation, and the parties will tour placements prior to holding a second mediation, they established good cause to hold a second mediation. The parties' request for the same mediator to be assigned is denied. OAH assigns mediator based on departmental need.

The parties established good cause to continue the due process hearing since the requested mediation date is after the currently scheduled hearing.

The request for continuance is granted, but not for the length of time requested. The parties did not provide good cause to continue the due process hearing to April 9, 2024. The new dates are:

MEDIATION will be held on February 27, 2024, at 9:00 AM to 4:30 PM.

PREHEARING CONFERENCE will be held on March 4, 2024, at 3:00 PM.

DUE PROCESS HEARING will be held on March 19, through March 21, 2024.

The mediation, prehearing conference, and due process hearing will be held by videoconference or telephone, unless otherwise ordered. The due process hearing will begin at 9:30 AM on all days, and generally end at 3:30 PM, unless otherwise ordered. The hearing will continue day to day, as needed, Mondays and Fridays included, 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. Late motions will only be considered if good cause is established for the late filing.

The parties must immediately give potential witnesses the hearing dates, and must subpoena witnesses, if necessary, so they are available to testify. Failing to properly notify or subpoena a witness is not good cause to delay the hearing.

IT IS SO ORDERED.

Marlo Nisperos

Marlo Nisperos

Administrative Law Judge

Office of Administrative Hearings