

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:
PARENT ON BEHALF OF STUDENT,

and

PALM SPRINGS UNIFIED SCHOOL DISTRICT,
OAH CASE NUMBER 2023100518
OAH CASE NUMBER 2023100737

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

JANUARY 26, 2024

On October 12, 2023, Student filed a Request for Due process Hearing, called a complaint, with the Office of Administrative Hearings, called OAH, naming Plam Springs Unified School District. On October 23, 2023, Palm Springs filed a complaint with OAH, naming Student. On November 2, 2023, OAH granted Palm Springs's motion to consolidate the matters. On November 9, 2023, OAH granted the parties' joint request to schedule a mediation on December 7, 2023. On December 7, 2023, OAH convened the mediation.

On January 17, 2024, Student filed a joint request to schedule a mediation, but because Palm Springs did not sign the request, OAH took no action on it. On January 22, 2023, OAH denied the parties' joint request to schedule a second mediation because the parties failed to provide good cause for why a second mediation should be granted and because the requested date was not available.

On January 26, 2024, the parties filed a joint request to schedule a second mediation and continue the due process hearing. They contend a second mediation should be scheduled because the parties were not able to participate in the first mediation. The parties assert the first mediation was not held because there was confusion about the need for an interpreter, and no interpreter was provided or available for the scheduled mediation. The parties claim the first date they are available for mediation of February 15, 2024, which is after the currently scheduled due process hearing is scheduled to begin. The parties request to continue the due process hearing so they may attend 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 to schedule a second mediation in this matter. Since the parties were unable to participate in the mediation scheduled for December 7, 2023, due to a need for an interpreter and that none was available, they established good cause to schedule a second mediation.

The parties established good cause to continue the due process hearing. Because the mediation date requested is after the date of the currently scheduled hearing is set to being, the parties showed good cause to continue the due process hearing.

The request is granted. All previously scheduled dates are vacated. The new dates are:

MEDIATION will be held on February 15, 2024, at 9:00 AM to 4:30 PM.

PREHEARING CONFERENCE will be held on February 16, 2024, at 3:00 PM.

DUE PROCESS HEARING will be held on February 27, through February 29, 2024.

The parties' request to schedule the prehearing conference on February 12, 2024, is denied. Prehearing conferences are scheduled on Monday or Friday, five to ten business days before the due process hearing. The prehearing conference has been scheduled based on the requested hearing dates.

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