

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT.
OAH CASE NUMBER 2023100967

ORDER GRANTING REQUEST FOR CONTINUANCE OF
PREHEARING CONFERENCE AND HEARING

JANUARY 25, 2024

On October 27, 2023, Student filed a request to continue the due process hearing with the Office of Administrative Hearings, referred to as OAH, naming Fresno Unified School District. On November 28, 2023, OAH granted the parties joint request for a mediation and continuance, setting a mediation for December 20, 2023, prehearing conference for February 9, 2024, and hearing for February 21 and 22, 2024.

The parties attended the December 20, 2023 mediation and agreed to an independent educational evaluation to be completed by approximately March 22, 2024. The parties also agreed to hold an individualized education program, or IEP, team meeting, to review the evaluation on or near April 2, 2024, through April 5, 2024.

On January 23, 2024, Student filed a request to continue the hearing after review of the agreed upon evaluation. On that same date, Fresno filed a non-opposition, stating that Fresno and Student agreed to the request for continuance and new hearing dates.

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).)

Student established good cause to continue the due process hearing. An unexpected change in the status of the case occurred because of the parties' efforts at mediation, making the matter unready for hearing. The parties met and conferred and agreed on new dates for the hearing. The dates requested for hearing are shortly after the IEP team meeting set to review the evaluation. Hearing will proceed six months after Student filed the request for due process hearing, which is reasonable. Any further requests for continuance must be accompanied by a declaration establishing exceptional good cause.

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

PREHEARING CONFERENCE will be held on April 15, 2024, at 1:00 PM.

DUE PROCESS HEARING will be held on April 23, 24, and 25, 2024.

PARTICIPANT INFORMATION SHEETS, OR ANY CHANGES THERETO, FOR MEDIATION, PREHEARING CONFERENCE, AND HEARING MUST BE FILED TWO BUSINESS DAYS PRIOR TO THE DATE OF THE SCHEDULED EVENT.

The 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.

Cole Dalton

Cole Dalton

Administrative Law Judge

Office of Administrative Hearings