

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ANAHEIM ELEMENTARY SCHOOL DISTRICT.

OAH CASE NUMBER 2024010013

ORDER GRANTING REQUEST TO CONTINUE

DUE PROCESS HEARING

JANUARY 23, 2024

On January 19, 2024, after the prehearing conference in this case, Student filed a request to continue the due process hearing, only, with the Office of Administrative Hearings, called OAH. On January 22, 2024, Anaheim Elementary School District filed a non-opposition to Student's motion.

In the motion and its supporting declaration, Student requested the continuance on grounds that the hearing dates conflicted with the hearing dates in three other cases previously filed by Student's trial attorney. Student filed the due process hearing request in this matter on December 29, 2023. OAH scheduled the due process hearing for January 30, 2024 through February 1, 2024. Student requests a continuance of the

hearing dates to March 19 through 21, 2024. This is the first continuance request in this case.

Although the hearing dates in this matter initially conflicted with the hearing dates in three other cases, OAH has granted requests for mediation and continued the hearing dates in two of these cases, and the conflicts no longer exist. However, the conflict with one case remains. The January 22, 2024, order following the prehearing conference in OAH Case no. 2023120446 confirms that case remains scheduled for hearing on January 30 through February 1, 2024, with no continuance motions pending or contemplated.

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 has established good cause for the requested continuance of this case. This case was filed less than a month ago, and Anaheim does not oppose this first continuance request. Student's attorney of record has demonstrated unavailability, and it would be prejudicial to Student to require another attorney to prepare for hearing in one week.

However, Student's motion did not support a continuance of the length requested. The parties in conflicting case number 2023120446 estimated that hearing would last three days and end on February 1, 2024. Good cause is thereby shown for a two-week continuance of the scheduled hearing dates in this case.

The previously scheduled hearing dates in this case are vacated. The new dates are:

DUE PROCESS HEARING will be held on February 13 through 15, 2024.

The 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.

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.

A handwritten signature in black ink, appearing to read "Robert G. Martin". The signature is fluid and cursive, with a long horizontal stroke at the end.

Robert G. Martin

Administrative Law Judge

Office of Administrative Hearings