

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

IN THE MATTER OF:  
PARENT ON BEHALF OF STUDENT,

v.

ETIWANDA SCHOOL DISTRICT.  
OAH CASE NUMBER 2024020348

ORDER FOLLOWING PREHEARING CONFERENCE  
GRANTING ETIWANDA'S REQUEST FOR CONTINUANCE

MARCH 18, 2024

On March 18, 2024, Administrative Law Judge Cararea Lucier, Office of Administrative Hearings, held a video prehearing conference. The Administrative Law Judge will be referred to as an ALJ. The prehearing conference will be referred to as a PHC. Claudia Shockley and Robert Burgermeister, Attorneys at Law, appeared on behalf of Student. Sundee Johnson, Attorney at Law, appeared on behalf of Etiwanda School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

## HEARING DATES, TIMES, AND LOCATION

Etiwanda moved to continue the prehearing conference and due process hearing based on the unavailability of counsel on the currently scheduled hearing dates of March 26 through March 28, 2024. Etiwanda's counsel is scheduled to appear before OAH for a due process hearing in a separate matter which was filed before this current matter. Additionally, several of Etiwanda's witnesses are unavailable due to pre-planned, pre-purchased travel plans or jury duty. This is the first request for a continuance in this matter.

The motion was not filed three days before the PHC. Etiwanda established good cause for filing the motion less than three days before this PHC because Etiwanda attempted to timely file the motion on March 13, 2024, but realized it was missing a signature on a sworn declaration after it submitted the motion to OAH and Student's counsel. Etiwanda re-submitted the motion with signatures on March 14, 2024. Student's counsel received a copy of the motion on March 13, 2024, and was not prejudiced by the final version being filed on March 14, 2024.

Student opposed the motion on the grounds that Etiwanda employed a large law firm to represent it and could use another attorney to represent it if Attorney Johnson was not available.

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).)

The request for continuance is granted for good cause due to the unavailability of Etiwanda's counsel and several Etiwanda witnesses. Additionally, this is the first continuance in this matter. All previously scheduled dates are vacated. The case shall proceed as follows:

PREHEARING CONFERENCE will be held on April 12, 2024, at 3:00 PM.

All other prehearing matters shall be addressed at the April 12, 2024 prehearing conference. All prehearing motions must be filed three business days before the PHC.

DUE PROCESS HEARING will be held April 23, 2024, through April 25, 2024.

The hearing will be conducted via telephone or videoconference and shall begin at 9:30 AM and end at 3:30 PM on all days, unless otherwise ordered. The hearing shall continue day to day at the discretion of the ALJ.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses, if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed.

## SETTLEMENT

The parties shall immediately inform OAH in writing if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. If the parties reach a settlement within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

If a full and final written settlement agreement is reached after 5:00 PM the day before the hearing, the parties shall leave a voicemail message regarding the settlement at (916) 274-6035. The parties should also leave contact information such as cellular phone numbers of each party or counsel for each party. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH at <https://www.applications.dgs.ca.gov/oah/oahsftweb>.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

## FAILURE TO COMPLY

Failure to comply with this order may result in the exclusion of evidence or other sanctions.

## ORDER INCLUDES ALL RULINGS

This order includes all rulings made at the PHC.

IT IS SO ORDERED.

*Cararea Lucier*

Cararea Lucier

Administrative Law Judge

Office of Administrative Hearings