

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

IN THE MATTER OF:  
PARENTS ON BEHALF OF STUDENT,

v.

MONROVIA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023100027

ORDER DENYING REQUEST TO RESCHEDULE SECOND  
MEDIATION AND FOR THIRD CONTINUANCE OF DUE  
PROCESS HEARING

APRIL 19, 2024

On September 29, 2023, Parents on behalf of Student filed a request for due process hearing with the Office of Administrative Hearings, called OAH, naming Monrovia Unified School District, called Monrovia. On October 30, 2023, OAH issued an order granting request for videoconference mediation and continuance of due process hearing. The parties participated in mediation on December 11, 2023, but did not resolve their dispute.

On February 1, 2024, OAH issued an order granting Student's motion to amend the complaint. On February 2, 2024, OAH issued a scheduling order setting the prehearing conference and due process hearing. The prehearing conference was scheduled for March 8, 2024, and the due process hearing was scheduled to begin March 19, 2024.

On March 4, 2024, the parties filed a joint request for a second mediation and a second continuance of the due process hearing, to begin May 7, 2024. The request was supported by a declaration under the penalty of perjury by Student's attorney, Surisa Rivers. On March 6, 2024, OAH issued an order granting the parties' request to schedule a second mediation and continue the due process hearing. As the parties requested, the second mediation was scheduled for March 28, 2024, the prehearing conference was continued to April 26, 2024, and the due process hearing was continued to May 7 through 9, 2024. On March 27, 2024, the day before the scheduled mediation, Student cancelled the mediation due to Parent's illness.

On March 12, 2024, the parties filed a third joint request for a hearing continuance stating that the hearing dates they requested on March 4, 2024, for May 7 through 9, 2024, was a typographical error and the parties intended to seek a continuance of the hearing to begin May 21, 2024. The parties requested the due process hearing be continued to May 21 through 23, 2024. On March 18, 2024, OAH issued an order denying the request for a further hearing continuance on the basis the parties did not establish good cause.

One month later, on April 17, 2024, the parties filed a joint request to reschedule the second mediation and for a third continuance of the due process hearing. The basis for the request was Monrovia's need to complete an additional assessment for Student

and hold an IEP team meeting to review the assessment results. The motion requested OAH schedule a mediation for June 3, 2024, and continue the prehearing conference to July 1, 2024, and the due process hearing to July 16 through 18, 2024.

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).)

OAH considers an initial request for a mediation on a date beyond the scheduled hearing to be good cause to continue the hearing. Therefore, on October 30, 2023, OAH granted the parties' joint request for mediation and hearing continuance. A request for another mediation must not only demonstrate a reasonable basis for an additional mediation but also establish good cause for another hearing continuance.

The addition of allegations and issues in an amended complaint, filed after an earlier scheduled mediation, does not automatically entitle the parties to a second mediation. Further, one mediation is granted at public expense. A second mediation can be granted if good cause is established. Here, the parties have not established good cause to reschedule a second mediation. A full-day mediation was held on December 11, 2023. OAH granted Student's motion to amend on February 1, 2024. OAH scheduled a second mediation for March 28, 2024, which the parties cancelled. The parties delayed over two weeks in requesting to reschedule a second mediation. The parties have not established good cause for rescheduling a second mediation, nor for requesting that the second mediation occur over two months later, on June 3, 2024.

The parties also have not demonstrated good cause for a third continuance of the due process hearing. The parties' April 17, 2024 motion was supported by a declaration under penalty of perjury by Monrovia's attorney, Justin Shinnfield. The

declaration states that additional time is needed to complete Student's assessment and hold an IEP team meeting. These facts do not constitute good cause for a further continuance. Shinnefield also states he will be on a prepaid vacation the week of May 3 through 10, 2024, but did not provide facts in support of this contention, nor did he assert this in the parties' March 12, 2024 request to change the dates of their request to continue the due process hearing to May 21 through 23, 2024, because their request for hearing on May 7 through 9, 2024, was a typographical error.

The request to reschedule a second mediation and for a third continuance of the hearing is denied without prejudice because of the parties' insufficient showing of good cause. All prehearing conference and due process hearing dates are confirmed and will proceed as calendared.

IT IS SO ORDERED.

*Jennifer Kelly*

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings