

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT.
OAH CASE NUMBER 2023100967

ORDER GRANTING JOINT REQUEST FOR THIRD
CONTINUANCE

APRIL 9, 2024

On October 27, 2023, Student filed with the Office of Administrative Hearings, called OAH, a due process hearing request naming Fresno Unified School District, called Fresno. On November 27, 2023, the parties filed a joint request to continue the due process hearing. On November 28, 2023, OAH granted the parties' joint request for a mediation and continuance, setting a mediation for December 20, 2023, the prehearing conference for February 9, 2024, and the 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, which Fresno did not oppose. On January 25, 2024, OAH granted Student's motion, setting a prehearing conference for April 15, 2024, and hearing for April 23, through 25, 2024.

On April 5, 2024, the parties filed a joint request for continuance of the due process hearing. The sworn declaration of Student's attorney explains that the independent assessor has informed the parties the assessment and assessment report will not be completed until April 19, 2024, and the parties are seeking a continuance of approximately 30 days to hold an IEP team meeting to review the report, as agreed. The parties request a hearing on mutually agreed dates of May 28, through 30, 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).)

The parties have established good cause for the short continuance requested. The parties agreed at mediation to hold an IEP team meeting after receipt of the independent educational evaluation, that may resolve some or all of Student's claims without the necessity of hearing. The assessor's delay in completing the independent educational evaluation is a significant and unexpected change that makes the case not ready for trial.

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

PREHEARING CONFERENCE will be held on May 17, 2024, at 10:00 AM.

DUE PROCESS HEARING will be held on May 29 and 30, 2024. Please note that OAH does not schedule due process hearings to start on a Tuesday following a Monday

holiday. Monday, March 27, 2024, is a holiday, and the requested start date of Tuesday, May 28, 2024 is not available.

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, 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.

No further continuances are contemplated without a showing of exceptional good cause.

IT IS SO ORDERED.

Alexa Hohensee

Alexa Hohensee

Administrative Law Judge

Office of Administrative Hearings