

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENTS ON BEHALF OF STUDENT,

and

ENCINITAS UNION SCHOOL DISTRICT,

OAH CASE NUMBER 2023120621

OAH CASE NUMBER 2024030369

ORDER DENYING ENCINITAS UNION SCHOOL DISTRICT'S
REQUEST FOR CONTINUANCE

APRIL 29, 2024

On December 15, 2023, Parents on behalf of Student filed a request for due process hearing, called a complaint, with the Office of Administrative Hearings, called OAH, naming Encinitas Union School District, called Encinitas. On January 16, 2024, OAH issued an order granting the parties' joint request for videoconference mediation and continuance of due process hearing. The mediation was scheduled for February 21, 2024, at 9:00 a.m. The prehearing conference, called PHC, was continued to April 5, 2024, and the due process hearing was continued to April 16 through 18, 2024.

On March 11, 2024, Encinitas filed a complaint in OAH case number 2024030369, naming Student. On March 12, 2024, Encinitas filed a motion to consolidate its case with Student's case. On March 19, 2024, OAH issued an order granting the motion to consolidate. OAH designated Student's case in OAH case number 2023120621 as primary for purposes of calculating statutory deadlines. OAH also vacated all dates in Encinitas's case.

On March 26, 2024, Student filed a motion to amend and an amended complaint. On March 28, 2024, Encinitas filed a statement of non-opposition. On March 29, 2024, OAH issued an order granting Student's motion to amend. On April 2, 2024, OAH issued a scheduling order setting the prehearing conference, called PHC, and due process hearing dates. The PHC is scheduled for May 6, 2024, at 3:00 p.m. The due process hearing is scheduled for May 14 through 16, 2024.

On April 22, 2024, Encinitas moved to continue the due process hearing. Encinitas's motion was supported by a declaration under penalty of perjury from its attorney of record. OAH did not receive a response from Student.

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 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; and whether the interests of justice are served by the continuance. ((Cal. Rules of Court, rule 3.1332(d).)

Encinitas did not establish good cause to continue the due process hearing. Encinitas seeks a one-month continuance because its attorney is scheduled to begin a hearing in another case pending before OAH in case number 2024010623 on the same days as the current matter. Earlier-filed cases take priority for scheduling purposes. OAH considers each request for continuance, both before and after consolidation, when ruling on motions to continue. Doing otherwise could allow the parties to seek multiple continuances to delay mediation, hearing, and a final decision indefinitely.

In this consolidated matter, Student's case is primary. Student's case was originally filed on December 15, 2023. Encinitas's attorney's other pending matter before OAH was filed on January 22, 2024, and does not have scheduling priority over this consolidated matter. Accordingly, Encinitas has failed to show good cause for a continuance and its request is denied. 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