

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024010975

ORDER DENYING SECOND REQUEST FOR SECOND
MEDIATION AND CONTINUANCE

APRIL 25, 2024

On January 31, 2024, Student filed a due process complaint with the Office of Administrative Hearings, called OAH, naming San Diego Unified School District. On February 13, 2024, OAH issued an order granting the parties' joint request for mediation and continuance. On March 1, 2024, Parents consented to an assessment plan for Student's triennial re-evaluation. The parties mediated the matter on March 27, 2024. On April 22, OAH issued an order denying the parties' joint request for a second mediation and continuance. The order specifically found the parties' desire to hold a second mediation and continuance to allow the parties to consider the re-evaluation did not constitute good cause for their request.

On April 23, 2024, San Diego retained counsel, and Fagan Friedman and Fulfrost filed a Notice of Representation. On April 24, 2024, San Diego filed a second request for a second mediation on June 5, 2024, and a continuance of the due process hearing to July 2024, to allow San Diego to participate in a second mediation with legal representation and new information provided by the reevaluation, which San Diego confirmed had not yet been completed. The requests were supported by sworn declaration asserting that Student agreed with all requested dates.

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).)

San Diego did not establish good cause for a second mediation or continuance. San Diego's counsel accepted representation in this matter knowing the currently scheduled hearing dates on May 7-9, 2024. The parties did not establish good cause for a second mediation to mediate again, but with representation. San Diego chose to engage in the first mediation unrepresented. San Diego also did not establish good cause for a second mediation to consider the reevaluation. The re-evaluation involves new claims not contemplated at the time of the filing in in this matter, as discussed in the OAH order denying the parties' first request for a second mediation. Accordingly, The requests for a second mediation and continuance are Denied. All prehearing conference and due process hearing dates are confirmed and will proceed as calendared.

IT IS SO ORDERED.

Rita Defilippis

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Administrative Law Judge

Office of Administrative Hearings