

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

GILROY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024020008

ORDER FOLLOWING PREHEARING CONFERENCE FOR
HEARING BY VIDEOCONFERENCE AND GRANTING
CONTINUANCE OF THE PREHEARING CONFERENCE AND
DUE PROCESS HEARING

APRIL 12, 2024

On April 12, 2024, Administrative Law Judge Laurie Gorsline, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Sean Hobson, Attorney at Law, appeared on behalf of Student. Kristal Tidwell, Attorney at Law, appeared on behalf of Gilroy Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

REQUEST FOR CONTINUANCE AND THE DUE PROCESS HEARING

On April 12, 2024, Gilroy filed a motion to continue the hearing to the end of May 2024, supported by a declaration that its counsel is unavailable for hearing due to the serious illness of counsel's father and the daily care he requires for the next eight weeks, which counsel only learned about on April 11, 2024. At the PHC, Gilroy's counsel represented that another attorney was not able to step in to handle this matter until the end of May 2024. Student did not oppose the request, but his counsel is unavailable on May 30, 2024. Both parties agreed to a continuance of the hearing to June 4 through 6, 2024, and a PHC on May 20, 2024, at 10:00 AM. Student's counsel also indicated that the parties had recently participated in mediation and believed the matter will settle.

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.) Generally, continuances are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

The request is granted. Based on Gilroy counsel's representations that she only learned about her father's immediate care needs on April 11, 2024, the ALJ finds good

cause for filing the continuance request late. The ALJ also finds good cause for the requested continuance to June 4 through 6, 2024, based on the representations made in the moving papers and counsel's unavailability. As discussed below, the ALJ also finds good cause to continue the hearing based on Student's failure to file a PHC statement containing a concise statement of the issues as required by the OAH scheduling order, necessitating that Student file a new PHC statement. However, OAH does not contemplate granting any further continuances. Gilroy's counsel was instructed she may have to make arrangements to have another lawyer handle the matter on the new dates in event she remains unavailable to handle the matter. The new dates are as follows:

PREHEARING CONFERENCE will be held on May 20, 2024, at 10:00 AM.

DUE PROCESS HEARING will be held on June 4, through June 6, 2024.

The mediation, 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, as needed, Mondays and Fridays included, at the discretion of the Administrative Law Judge. PHC statements and motions are due to OAH no later than three business days before the PHC. 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.

PREHEARING CONFERENCE STATEMENTS

On April 9, 2024, Student filed a PHC statement. Student's PHC statement failed to comply with the OAH scheduling order in that it neglected to contain a concise statement of the issues. Instead of setting forth each of the issues for hearing, Student merely copied and pasted into the PHC statement four mostly vague headings from the complaint, which failed to adequately provide a clear statement of the issues for hearing.

At the PHC, the ALJ addressed the inadequacy of Student's PHC statement, as reflected on the record. Because Student failed to file a complaint PHC statement, the scope of the issues Student intended to have OAH adjudicate at hearing is unclear. Accordingly, Student's counsel was ordered to timely file a new PHC statement pursuant to the discussion held at the PHC. Gilroy shall also timely file an updated PHC statement before the next PHC.

SETTLEMENT

The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached 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. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH by visiting [OAH Secure e-file](https://www.applications.dgs.ca.gov/oah/oahsftweb) at <https://www.applications.dgs.ca.gov/oah/oahsftweb>.

If a full and final written settlement agreement is reached after 4:00 PM the day prior to 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.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed 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

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline

Administrative Law Judge

Office of Administrative Hearings