

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

VENTURE ACADEMY FAMILY OF SCHOOLS,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2024020488

ORDER GRANTING REQUEST FOR CONTINUANCE AND
SETTING DUE PROCESS HEARING

APRIL 9, 2024

On April 9, 2024, Administrative Law Judge Kara Hatfield, Office of Administrative Hearings, appeared to begin the due process hearing scheduled for this case.

Attorney Marcy Gutierrez appeared to represent Venture Academy Family of Schools.

Silvia De Alba, Director of Venture Academy, appeared on behalf of Venture Academy.

Neither parent appeared on behalf of Student. The Administrative Law Judge is called an ALJ, and the Office of Administrative Hearings is called OAH.

De Alba successfully contacted Mother through text message and received a phone call from Mother, who stated she was ill, and she wanted to postpone the

hearing one week. Parent and Venture Academy had some discussion outside the listening of the ALJ.

The ALJ then joined the discussion off the record to learn if there was any stipulation regarding the hearing dates. Mother stated she was ill, Father was at work, and Mother thought she needed one week to be well enough to participate in the due process hearing. Venture Academy did not agree to a one-week continuance because Venture Academy will be on spring break and Venture Academy's witnesses will not be available that week. Venture Academy offered additional arguments against a longer continuance due to attorney Gutierrez's unavailability because of another due process hearing she is scheduled to appear for beginning on April 16, 2024, which is estimated to require five to eight days for hearing making her unavailable for a hearing starting April 23, 2024. Gutierrez is also scheduled to begin two due process hearings on April 30, 2024. Venture Academy objects to a long continuance.

Through an interpreter contracted by OAH, the ALJ attempted to listen to Parent through De Alba's cell phone. The ALJ requested Parent dial in to the Zoom meeting to improve the sound quality, and the ALJ provided Parent the phone number and access code. Parent refused, and also failed to dial in to the phone number the ALJ provided Parent. The ALJ attempted both off the record, and later on the record, to call Parent from the Zoom meeting. Parent did not answer the ALJ's telephone calls, and Parent's voicemail box would not accept new messages.

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).)

Student established good cause to continue the due process hearing one day, to Wednesday, April 10, 2024, at 9:30 AM. Either Mother or Father must appear by telephone or videoconference following instructions emailed to the family's email address on file with OAH, either to proceed with the due process hearing or to request a

further continuance and participate in an interactive discussion with the ALJ regarding future hearing dates.

If neither Parent attends by telephone or videoconference on Wednesday April 10, 2024, at 9:30 AM, the due process hearing may begin and be conducted without Student or her representatives.

IT IS SO ORDERED.

Kara Hatfield

Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings