

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 2024020842

ORDER GRANTING REQUEST FOR VIDEOCONFERENCE
MEDIATION AND CONTINUANCE OF DUE PROCESS
HEARING

APRIL 4, 2024

On February 27, 2024, Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Fresno Unified School District. OAH set the prehearing conference for April 5, 2024, and the hearing to begin on April 16, 2024.

On March 22, 2024, the parties jointly requested a continuance to mediate this matter. The parties requested mediation on April 19, 2024, and for the due process hearing to begin on October 15, 2024. OAH denied the parties' request because the requested hearing dates were more than 60 days after the requested mediation date.

On April 2, 2024, the parties jointly requested a continuance to mediate with a requested mediation date of September 26, 2024, and the same requested hearing start date of October 15, 2024. OAH again denied the request because the parties did not submit a declaration with good cause for a six-month continuance.

On April 3, 2024, Student filed a declaration in support of the request to continue. Also on April 3, 2024, Fresno filed a statement of non-opposition and agreement with Student's declaration. On April 4, 2024, Student filed a third request for continuance with a declaration of good cause for a six-month continuance. Student again requested a mediation date of September 26, 2024, and for the hearing to begin on October 15, 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).)

Student established good cause to continue the due process hearing for six months. Student was granted an independent educational evaluation which he needs completed prior to the hearing to present essential testimony and material evidence. Student's independent educational evaluator is proficient in American Sign Language and consequently has a very impacted schedule. Student and his independent educational evaluator anticipate the evaluation will take place during summer 2024. While six months is an extraordinarily long time for a continuance, Student no longer resides within Fresno's boundaries nor attends a Fresno school. Therefore, his current placement and services are not at issue in this case. Additionally, Student's need for an evaluator proficient in American Sign Language presents a unique scheduling challenge. Therefore, the request is granted. However, no further continuances will be granted absent good cause unrelated to the independent educational evaluation.

All previously scheduled dates are vacated. The new dates are:

MEDIATION: September 26, 2024, at 9:00 AM to 4:30 PM.

PREHEARING CONFERENCE: October 4, 2024, at 10:00 AM.

DUE PROCESS HEARING: October 15, through October 17, 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. 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.

IT IS SO ORDERED.

Linda Dowd

Linda Dowd

Administrative Law Judge

Office of Administrative Hearings