

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN JUAN UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024050539

ORDER GRANTING REQUEST FOR CONTINUANCE OF

HEARING

JUNE 13, 2024

On May 10, 2024, Student filed a request for due process hearing, complaint, with the Office of Administrative Hearings, OAH, naming San Juan Unified School District.

On May 15, 2024, OAH issued a scheduling order setting the prehearing conference for June 17, 2024, and due process hearing for June 25, 26, and 27, 2024.

On June 7, 2024, San Juan timely filed a request to continue the due process hearing, more than three business days before the scheduled prehearing conference. On June 11, 2024, Student opposed the request for continuance.

San Juan contends the hearing should be continued because the hearing dates conflict with the hearing dates of Student's two siblings and that the same district counsel is assigned to conduct all three hearings. Moreover, San Juan contends that many of the same witnesses will be called to testify in each of the three cases and that the educational rights holder cannot be present at all three hearings at once.

Student contends the hearing should not be continued because counsel knew of the conflicting hearing dates when they accepted representation of the cases, that no declaration is attached to the motion, and that it is more efficient for district staff, and the administrator, to participate in hearings for all three siblings at the same time. Student contends that a continuance would be a hardship for the family because they need to obtain the relief they seek.

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 Juan established that it attempted to meet and confer with Student to obtain dates for a continuance and filed the motion only after Student would not agree to a continuance. San Juan established the need for a continuance in that the administrator, witnesses, and attorneys cannot be available for three simultaneously conducted hearings. Though it may be better practice to accompany a motion to continue with a supporting declaration, counsel are officers of the court and their statements in a signed pleading are tantamount to a sworn declaration. Here, counsel's statements have not been shown untrue. San Juan seeks a brief continuance of a recently filed case with no prior continuances. San Juan established good cause to continue the due process hearing.

The request is granted. All previously scheduled dates are vacated. The new dates are:

PREHEARING CONFERENCE will be held on July 19, 2024.

DUE PROCESS HEARING will be held on July 30, 2024, through August 1, 2024.

Participant information sheets, or any changes thereto, must be filed no later than two business days prior to the event scheduled.

The 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.

Cole Dalton

Cole Dalton

Administrative Law Judge

Office of Administrative Hearings