

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT

v.

LODI UNIFIED SCHOOL DISTRICT.
OAH CASE NUMBER 2024050664

ORDER GRANTING REQUEST FOR CONTINUANCE AND
SETTING PREHEARING CONFERENCE AND DUE PROCESS
HEARING

JUNE 20, 2024

On May 16, 2024, Student filed a request for due process hearing, naming Lodi Unified School District, called Lodi Unified. On June 14, 2024, Lodi Unified file a motion to continue the due process hearing because of the unavailability of Lodi Unified's attorney and essential witnesses for the presently scheduled hearing dates. The motion is supported by the declaration of Lodi Unified's counsel, John Louis Chiappe. Student did not file a response to Lodi Unified's request for continuance.

A due process hearing must be conducted, and a decision rendered, within 45 days of receipt of the due process notice unless an extension is granted for good

cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (Ed. Code, § 56505, subd. (f)(3); Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance or imposing conditions on the continuance; and any other relevant fact or circumstance. (Cal. Rules of Court, rule 3.1332(d).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. Lodi Unified's attorney has a prepaid vacation from July 8 to 12, 2024. Additionally, Lodi Unified contacted the essential witnesses it intends to use at the hearing. Two speech pathologists, the special education teacher, the school psychologist, and Student's program specialists have pre-planned out-of-state vacations or prepaid travel and reservations, during the scheduled hearing. Attorney Chiappe made a number of attempts to contact Student's attorney but did not receive a response.

Lodi Unified seeks a continuance to August 13, 14, and 15, 2024. This is the first continuance. Student did not oppose Lodi Unified's request. Student will not be prejudiced by the short continuance.

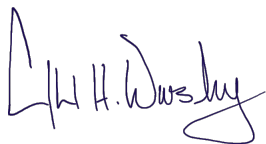
Lodi Unified has demonstrated good cause and the continuance request is granted. All dates are vacated. This matter will be set as follows:

PREHEARING CONFERENCE will be held on August 2, 2024, at 3:00 PM.

DUE PROCESS HEARING will be held on August 13, 14, and 15, 2024.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses, if necessary, to ensure their availability to testify. Good cause for witness unavailability is not established by failing to properly notify or subpoena a witness. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference or with evidence of good cause why it was not possible to file the motion by that date.

IT IS SO ORDERED.

A handwritten signature in blue ink, appearing to read "Clifford H. Woosley".

Clifford H. Woosley

Administrative Law Judge

Office of Administrative Hearings