

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

IN THE MATTER OF:  
PARENT ON BEHALF OF STUDENT,

v.

LODI UNIFIED SCHOOL DISTRICT.  
OAH CASE NUMBER 2024050667

ORDER GRANTING REQUEST FOR CONTINUANCE AND  
SETTING DUE PROCESS HEARING

JUNE 20, 2024

On June 14, 2024, Lodi Unified School District, called Lodi, filed a request to continue the due process hearing with the Office of Administrative Hearings, called OAH. Student did not file a response. The due process hearing is currently scheduled for July 9 through 11, 2024.

Lodi contends the hearing should be continued because multiple key witnesses are unavailable, particularly as the hearing is scheduled to take place during Lodi's summer break and essential school witnesses have pre-arranged to travel or to be primary caregivers during that period. Lodi's due process representative is scheduled to appear in an earlier-filed due process hearing, and Lodi's attorney will be on a

pre-planned, pre-paid vacation during that time. Lodi's motion is supported by the sworn declaration of Lodi's attorney giving specific facts as to each essential witness, representative, and the attorney. The declaration also establishes that Lodi's attorney attempted several times to meet and confer with Student's counsel on mutually agreeable continuance dates, but Student's counsel did not respond. Lodi's attorney, its representative, and the key witnesses will all be available for a hearing to begin on August 13, 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).)

Lodi established good cause for a continuance of the due process hearing to the proposed dates. Lodi's representative, its attorney, and multiple essential witnesses are not available on the currently scheduled hearing dates or throughout Lodi's summer break. Lodi seeks a short continuance of approximately 30 days to August 13, 2024, and Student has not filed an objection to the proposed dates.

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

PREHEARING CONFERENCE will be held on August 2, 2024, at 10:00 AM.

DUE PROCESS HEARING will be held on August 13 through 15, 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.

*Alexa Hohensee*

Alexa Hohensee

Administrative Law Judge

Office of Administrative Hearings