

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

ORANGE UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2024050435

OAH CASE NUMBER 2024020908

ORDER FOLLOWING PREHEARING CONFERENCE,
GRANTING MOTION FOR RECONSIDERATION, AND
GRANTING REQUEST FOR MEDIATION AND
CONTINUANCE

JUNE 17, 2024

On June 17, 2024, Administrative Law Judge Cole Dalton, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Andrea Blair, Attorney at Law, appeared on behalf of Student. Tracy Petznick Johnson, Attorney at Law, appeared on behalf of Orange Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

MOTION FOR RECONSIDERATION OF ORDER DENYING JOINT REQUEST FOR CONTINUANCE

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time, generally within ten days. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

The parties filed a joint motion for reconsideration within a reasonable period of time, one business day of the order denying their joint request for a mediation and continuance. The parties demonstrated new or different facts justifying reconsideration.

JOINT REQUEST FOR MEDIATION AND CONTINUANCE

The parties demonstrated they timely filed their joint request for mediation and continuance three business days before the PHC, on June 12, 2024, at 4:31 PM, making that motion timely. The parties also explained their reasons for cancelling the previously scheduled mediation. Student cancelled the mediation, subsequently filing a request for due process hearing and request for consolidation. Orange was not consulted about

and did not agree to cancel the mediation, as Orange was prepared to discuss all issues at mediation.

The parties were admonished regarding the impropriety of cancelling mediations on the eve of mediation. Specifically, such cancellations impact the schedules and workload of staff, administrative law judges, and pro tems, and increase costs incurred by the California Department of Education. For these reasons, the Parties should not expect second requests for mediation to be automatically granted.

The parties were also admonished regarding delays in seeking a mediation and continuance. Here, the parties waited until one month after OAH granted Student's request for consolidation and approximately eight days prior to the first day of hearing to seek a mediation and continuance.

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).)

The Parties demonstrated they timely filed their request for mediation and continuance three days prior to the PHC. The Parties sought a brief continuance, which will allow the hearing to proceed within six months Orange's filing its request for due process hearing. Based upon the discussion with the parties held on the record, the request is granted.

MEDIATION DATE is July 9, 2024, 1:30 pm to 5:00 PM.

MEDIATION will occur via telephone or video.

PREHEARING CONFERENCE will be held on July 19, 2024, 10:00 AM.

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

PARTICIPANT INFORMATION SHEETS, OR ANY CHANGES THERETO, MUST BE FILED TWO BUSINESS DAYS PRIOR TO THE DATE OF THE SCHEDULED EVENT.

The hearing shall begin at 9:30 AM on all days unless otherwise ordered. The hearing shall continue day to day, as needed 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 or with a showing of good cause why it was not timely filed. All other matters will be discussed at the continued PHC.

SETTLEMENT

The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH by visiting OAH Secure e-file at <https://www.applications.dgs.ca.gov/oah/oahsftweb>.

If a full and final written settlement agreement is reached after 4:00 PM the day prior to hearing, the parties shall leave a voicemail message regarding the settlement at (916) 274-6035. The parties should also leave contact information such as cellular phone numbers of each party or counsel for each party.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

IT IS SO ORDERED.

Cole Dalton

Cole Dalton

Administrative Law Judge

Office of Administrative Hearings