

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

MODESTO CITY SCHOOLS.
OAH CASE NUMBER 2024060042

ORDER FOLLOWING PREHEARING CONFERENCE
GRANTING REQUEST FOR CONTINUANCE

JULY 15, 2024

On July 15, 2024, Administrative Law Judge Linda Dowd, Office of Administrative Hearings held a telephonic prehearing conference. The Administrative Law Judge will be referred to as an ALJ. The prehearing conference will be referred to as a PHC. Attorney Christian Knox appeared on behalf of Student. Attorney Marcella Gutierrez appeared on behalf of Modesto City Schools. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

On July 9, 2024, the parties intended to file a joint motion to continue, however, Student inadvertency filed the request without Modesto's signature. On July 15, 2024, the parties refiled the motion to continue with all necessary signatures. The complete motion was not filed three days before the PHC. However, the parties established good cause for the late filing due to a filing error.

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 request for continuance is granted for good cause. The parties' desire to mediate constitutes good cause for a first continuance. All previously scheduled dates are vacated. The case shall proceed as follows:

MEDIATION DATE is August 27, 2024, 9:00 AM to 4:30 PM.

MEDIATION will occur via telephone or videoconference.

PREHEARING CONFERENCE will be held on October 4, 2024, at 10:00 AM.

All other prehearing matters shall be addressed at the October 4, 2024, PHC. All prehearing motions must be filed three business days before the PHC.

Due Process Hearing: October 15, 16, and 17, 2024.

The hearing will be conducted via telephone or videoconference and shall begin at 9:30 AM and end at 3:30 PM on all days, unless otherwise ordered. The hearing shall continue day to day at the discretion of the ALJ.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses, if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good

cause” to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed.

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.

FAILURE TO COMPLY

Failure to comply with this order may result in the exclusion of evidence or other sanctions.

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the PHC. Any discussion and conversation not referenced in this Order is not binding on the ALJ conducting the hearing and may not be relied upon by the parties. The parties should be aware that, at hearing, the ALJ conducting the hearing has discretion to reconsider any part of this Order.

IT IS SO ORDERED.

Linda Dowd

Linda Dowd

Administrative Law Judge

Office of Administrative Hearings