

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

DEL MAR UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2024020881

ORDER GRANTING SECOND REQUEST FOR HEARING
CONTINUANCE AND SETTING PREHEARING CONFERENCE
AND HEARING

JULY 19, 2024

On February 27, 2024, Parents, on behalf of Student, filed a request for due process hearing, called a complaint, with the Office of Administrative Hearings, called OAH, naming Del Mar Union School District as respondent. The parties joint request to continue the case for hearing beginning July 30, 2024, was granted on April 3, 2024.

On July 7, 2024, Del Mar submitted a motion to continue the due process hearing, to September 4, 2024. The motion included no indication that Del Mar had met

and conferred with Student's counsel as to the proposed hearing dates. OAH did not receive a response to the requested continuance from Student.

OAH must conduct a due process hearing and render a decision within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

Del Mar has offered a number of reasons why the case should be continued to early September, some of which are valid and some of which are not. It is important to point out that, in this case, filed in February, the parties were granted quite a lengthy continuance at its outset. Generally, cases are scheduled for hearing well before a five-month delay between filing and the beginning of hearing. Asking for a hearing to begin over six months after filing is not in conformity with the speedy resolution mandate. Such requests generally are not granted absent evidence of extraordinary circumstances.

Examining the bases for the continuance, the parties raise the fact that Del Mar is on summer break until August 12, 2024. A district's summer holiday does not, in itself, constitute good cause for a continuance. Del Mar counsel also raise a number of conflicts with other scheduled hearings. However, many of those hearings are in cases filed later than this case. Earlier filed cases take hearing priority. Cases filed after February 27, 2024, the date this case was filed, do not constitute good cause for a continuance.

Del Mar also raises conflicts from several witnesses. Although no declarations from the individuals were filed, Del Mar counsel have confirmed that they are informed of these conflicts and their word as Officers of the Court will be accepted in this instance. Conflicts based on general child-care responsibilities do not constitute good cause for continuance. General school duties that have not been tied to an individual witness, date, or time do not constitute good cause for continuance. Therefore, the first week of school orientation and professional development does not constitute good cause for continuance. Witnesses often have to be absent from work to testify. Witness conflicts can be managed by the ALJ presiding over the case when witness scheduling is discussed.

Del Mar Counsel identifies two cases that were filed prior to this one. Several witnesses and one of Del Mar's counsel have identified pre-planned vacations. These conflicts constitute good cause to continue the hearing.

The request is granted. However, good cause has not been established for the length of the requested continuance. All previously scheduled dates are vacated. The new dates are:

PREHEARING CONFERENCE will be held on July 26, 2024, at 10:00 A.M.

DUE PROCESS HEARING will be held on August 6, 7, and 8, 2024.

No further continuances will be granted in this case absent sworn evidence of extraordinary circumstances from the individuals involved.

The prehearing conference and hearing shall be held by videoconference. The hearing shall begin at 9:30 AM on all days unless otherwise ordered and shall 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 or with a showing of good cause why the document was not timely filed.

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 notify potential witnesses of 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.

Penelope Pahl

Penelope S. Pahl

Administrative Law Judge

Office of Administrative Hearings