

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

PALO ALTO UNIFIED SCHOOL DISTRICT.
OAH CASE NUMBER 2024050022

ORDER FOLLOWING PREHEARING CONFERENCE FOR
HEARING BY VIDEOCONFERENCE AND ORDER GRANTING
CONTINUANCE OF THE PREHEARING CONFERENCE AND
HEARING; AND MOTION FOR BIFURCATION IS MOOT

JULY 31, 2024

On July 26, 2024, Administrative Law Judge Sabrina Kong, 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.

Attorney Sarah Fairchild appeared on Student's behalf. Attorney Matt Tamel, appeared on Palo Alto Unified School District's, called Palo Alto, behalf. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order.

Student filed a due process hearing on April 30, 2024, naming Palo Alto. On July 19, 2024, Palo Alto filed a request for due process hearing, naming Student, called Palo Alto's case. Student is a self-represented party in Palo Alto's case.

On July 22, 2024, Palo Alto filed a motion to consolidate its case with Student's case. At the PHC, Attorney Fairchild informed OAH that she would be representing Student in Palo Alto's case and will file a notice of representation with OAH after this PHC.

On July 23, 2024, Palo Alto filed a motion to bifurcate the hearing in Student's case and requested that issues regarding the applicability of a settlement agreement be heard before all other issues in Student's case.

Both parties agreed this case and Palo Alto's case should be consolidated and wished to mediate both cases and resolve all issues including the need to bifurcate hearing issues. Both parties sought a brief hearing continuance to September 10, 11 and 12, 2024.

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).)

The parties demonstrated good cause for a brief hearing continuance as this is a recently filed case, was continued once, and a brief continuance would provide the parties an opportunity to mediate and potentially resolve all issues in multiple cases. Further, a brief continuance would allow Attorney Fairchild to file documents with OAH regarding representation of Student in Palo Alto's case, consolidation of both cases, and request both cases proceed to hearing on the same September 10, 11 and 12, 2024, hearing dates. Therefore, the motion to bifurcate the hearing is moot as the parties agreed to mediate and resolve all issues potentially resolving the need for a hearing. Based on both parties' representations and discussions at the PHC, the ALJ agreed to continue the PHC and the hearing in this case as follows:

PHC, HEARING DATES, TIMES, AND LOCATION

The PHC is continued to August 26, 2024, at 10:00 AM.

The hearing will take place on September 10, 11, and 12, 2024, and continue day to day at the discretion of the ALJ. The hearing shall begin at 9:30 AM each day and generally end at 3:30 PM, unless otherwise ordered. PHC 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.

PARTICIPANT INFORMATION SHEETS FOR THE PHC AND DUE PROCESS HEARING MUST BE FILED TWO BUSINESS DAYS PRIOR TO THE DATE OF THE SCHEDULED EVENT.

PHC AND HEARING LOCATION

OAH is authorized to conduct PHC and due process hearings by videoconference or telephone. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) OAH will conduct the PHC and due process hearing by videoconference using the Zoom application. Unless otherwise ordered, participants are required to appear by videoconference using computer or device with video capability and Zoom.

The parties shall immediately notify all potential witnesses of the hearing dates and shall subpoena witnesses, if necessary, to ensure that the witnesses will appear to testify. A party's failure to notify or subpoena a witness to testify will not be considered good cause to continue the hearing. Instructions for issuing and responding to subpoenas and optional forms for subpoenas can be found on the website at <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena>.

ORDER INCLUDES ALL RULINGS

This order includes all rulings made at the PHC.

IT IS SO ORDERED.

Sabrina Kong

Sabrina Kong

Administrative Law Judge

Office of Administrative Hearings