BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023020910

ORDER GRANTING REQUEST FOR CONTINUANCE AND SETTING PREHEARING CONFERNCE AND DUE PROCESS HEARING

MARCH 27, 2023

On March 21, 2023, Sacramento City Unified School District filed a request to re-set, or continue, the dates for the non-expedited due process hearing with the Office of Administrative Hearings, referred to as OAH. Student did not file a response.

Sacramento City contends the hearing should be continued because it was not properly served with Parent's complaint. 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 facts surrounding service of the complaint are disputed. Parent contends that the complaint was served on February 10, 2023 but did not file a proof of service with OAH until February 28, 2023. That is the date the current schedule is based upon.

Parent was ordered to email a copy to Sacramento City's legal counsel on March 13, 2023. However, Sacramento City argues that Parent did not comply, and that it did not receive the actual complaint until OAH provided a copy on March 14, 2024.

The parties are currently set to begin an expedited hearing on March 28, 2023, and the issuance of the decision will overlap the current non-expedited hearing dates. Because the decision in the expedited matter might impact the outcome of the non-expedited hearing, and possibly lead to a resolution or settlement, there is good cause for a 30-day continuance. All previously non-expedited scheduled dates are vacated. The new dates are:

PREHEARING CONFERENCE will be held on May 1, 2023, at 1:00 PM.

DUE PROCESS HEARING will be held on May 9, through May 11, 2023.

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.



Brian H. Krikorian
Administrative Law Judge
Office of Administrative Hearings