BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023050849

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

MARCH 08, 2024

On March 8, 2024, Student and San Bernardino City Unified School District filed a joint request to continue the prehearing conference in this matter set for March 8, 2024, at 3:00 p.m. The request was made on grounds that Student's attorney was unavoidably unavailable to participate in the scheduled prehearing conference due to last minute air travel delays. The request was supported by a sworn declaration from Student's attorney, explaining that the airline on which she was traveling had on March 8, 2024 cancelled her original direct flight scheduled to arrive four hours before the PHC, replaced that flight with a two-flight itinerary still allowing time to participate in the PHC, then announced the second flight of that itinerary would be delayed to an arrival

time after the scheduled PHC. The parties requested the PHC be continued to March 11, 2024 at 1:00 p.m.

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).)

Student established good cause to continue the prehearing conference in this matter, based on the excusable unavailability of Student's attorney. The request for continuance is therefore granted. However, the parties' requested PHC date and time is not available, as OAH is in training the week of March 11 through 15, 2024. The PHC and hearing will be continued to available dates.

All previously scheduled dates are vacated. The new dates are:

PREHEARING CONFERENCE will be held on March 18, 2024, at 10:00 AM.

DUE PROCESS HEARING will be held on March 26 through 28, 2024.

The 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.



Robert G. Martin
Administrative Law Judge
Office of Administrative Hearings