BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

LONG BEACH UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2024080420

ORDER FOLLOWING PREHEARING CONFERENCE AND GRANTING MOTION TO CONTINUE HEARING

OCTOBER 11, 2024

On October 11, 2024, Administrative Law Judge Cole Dalton, 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.

Meagan Kinsey, Attorney at Law, appeared on behalf of Long Beach Unified School District. No appearance was made on behalf of Student. The matter trailed until 1:15 PM to provide Student with additional time to appear. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

MOTION TO CONTINUE HEARING

On August 9, 2024, Long Beach filed a request for due process hearing, or complaint, naming Student.

On August 26, 2024, OAH granted Long Beach's motion to continue the hearing based upon a conflict with an expedited due process hearing in OAH case number 2024070467, scheduled for hearing on the same dates. The expedited matter took priority over the current matter based upon legally mandated shortened timelines for such hearings.

On October 8, 2024, Long Beach filed a second motion to continue the hearing from October 22, 23, and 24, 2024, to November 5, 2024, on the grounds that OAH scheduled hearing in OAH case number 2024030094 on the same dates set for hearing in this matter and that Kinsey acts as the school districts' chosen attorney in both matters. Additionally, Parents sought continuance of IEP team meetings due to ongoing family health issues, which Kinsey believed would interfere with hearing dates in this matter.

During the PHC, Kinsey and the undersigned ALJ discussed at length Long Beach's reasons for seeking a continuance in this matter. Kinsey disclosed that, while the hearing conflict between her two OAH cases no longer exists, several other reasons support the need for a continuance. Concerns over Parents' availability for hearing in October 2024 continue based upon discussions with Student's counsel who has been attending IEP team meetings but who does not represent Student in this matter. Kinsey has surgery scheduled for November 5, 2024, and modified the continuance request to November 13 and 14, 2024. Kinsey anticipates the hearing will last two days.

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).)

Long Beach established good cause for an additional brief continuance of the due process hearing. Medical issues involving both parties have created a significant and unexpected change in the matter. Long Beach attempted to meet and confer with Student regarding dates for a continuance of this case but was unsuccessful. Long Beach seeks a brief continuance of this matter, filed only two months ago.

The request is granted. All previously scheduled dates are vacated. The new dates are:

PREHEARING CONFERENCE will be held on October 28, 2024, 1:00 PM.

DUE PROCESS HEARING will be held on November 13 and 14, 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.

PARTICIPANT INFORMATION SHEETS, OR ANY CHANGES THERETO, MUST BE FILED AT LEAST TWO BUSINESS DAYS BEFORE THE DATE OF THE EVENT.

ORDER INCLUDES ALL RULINGS

This order includes all rulings made at the PHC.

IT IS SO ORDERED.

Cole Dalton

Cole Dalton

Administrative Law Judge

Office of Administrative Hearings