

## **CONTINUANCE PROCEDURES**

**Introduction:** Upon receipt of a request for due process hearing and mediation, OAH issues a scheduling order which identifies a mediation date, the name of the assigned mediator, a date for prehearing conference and one date for hearing.<sup>1</sup> These dates are set to insure compliance with federally mandated timelines, which cannot be changed except upon a showing of good cause. If you agree to continue the case, the federally mandated timelines to issue a decision in the case will be extended. Every request for a continuance must be evaluated by OAH for a showing of good cause.

**Good Cause:** Good cause is a standard that typically depends on a variety of factors and may differ from case to case. When considering good cause, OAH is guided by the California regulations as well as the California State Rules of Court. (Cal. Code Regs., tit. 1, §1020; Cal. Rules of Court, Rule 3.1332.) A stipulation of the parties alone is not sufficient to continue a matter. When seeking a continuance, the parties must provide a written explanation that includes the reasons why the matter must be continued and the dates the parties would like to be scheduled. A good cause finding does not require a lengthy motion or discussion; it generally requires the reason why the matter must be continued. The parties must keep in mind that the law disfavors continuances and the federal law requires a decision within 75 days of the date a Student files a complaint or within 45 days for a District filed complaint. In an effort to help the parties understand why a continuance has been denied, OAH will include an explanation about why a continuance has been denied in a written order. When good cause is found, OAH will issue a simplified order setting new dates.

**Examples of Good Cause:** OAH has found good cause and agreed to continue cases where the parties have stipulated (agreed) to the continuance, the case is relatively new to the system, and the parties have indicated a willingness to mediate or are close to settlement. In addition, OAH has found good cause to continue cases where unrepresented parents have asked for a brief continuance to seek legal representation even if the other party objects. OAH has not found good cause and denied the request to continue in circumstances when one party requests to continue the matter to mediate, but the other party does not agree, in circumstances where the parties have stipulated to a continuance, but the case is many months old

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<sup>1</sup> In cases involving Los Angeles Unified School District, a mediator is not assigned at the outset.

and the parties did not provide any reason for the continuance, and in matters where the parties have used the continuance forms online, but have not followed the instructions on the form by seeking to continue the matter too far into the future without explanation. These are examples of matters that have or have not been continued, but it must be emphasized that good cause is based upon a case by case analysis; the parties should not hesitate to submit a request to continue and allow OAH to determine if the matter should proceed or a brief continuance is warranted.

**Initial Dates:** The dates for the initial mediation and initial hearing that are listed in the initial scheduling order often do not work with the parties who frequently have conflicting matters. OAH will agree to continue the initial mediation date and the initial hearing date one time based upon agreement of the parties. OAH provides a form on its website to assist the parties in continuing the matter. The parties are encouraged to use the form and follow the instructions. OAH will then evaluate the continuance request for good cause and issue a written ruling letting the parties know if the dates have been continued.

**Continuance requests other than for initial date:** All continuance requests after the initial request to continue must include an explanation about why the matter needs to be continued. The continuance form provided on the OAH website may still be used, but the parties must include either on the form or in a subsequent letter, the reasons for the request to continue. OAH will then evaluate the continuance request for good cause and issue a written ruling letting the parties know if the dates have been continued.

**Meet and Confer:** When continuing matters, OAH requests that the parties discuss agreeable dates for hearing and notify OAH of those dates. The matter can generally be set on the dates the parties agree upon, provided that good cause is found and the dates requested are within a reasonable period of time from the currently set date, generally no more than 90 days. This process is known as “meet and confer” and is required by the California regulations that govern OAH. (Cal. Code Regs., tit. 1, §1020.) The parties must meet and confer about agreeable dates and submit those dates to OAH when seeking a continuance. If the parties meet and confer but cannot agree upon dates, each party must submit unavailable dates and preferred dates in writing to OAH and OAH will select among those dates when continuing the matter. The form on the OAH website provides a box for the parties to check if they prefer OAH select dates within the next 90 days. OAH discourages trial setting conferences and will only set a trial setting conference in unusual cases.

If you have any questions, you may contact the OAH staff person assigned to your matter that is listed in the scheduling order you received. Thank you for your cooperation in handling these matters.